

No. 2028

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

J. I. LAMPRECHT and F. M. AIKEN, Trustees,
Appellants,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY
(a Corporation), THE KERN TRADING & OIL
COMPANY (a Corporation), and T. S. MINOT,
Appellees.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court
for the Southern District of California,
Northern Division.

FILED

SEP 29 1911

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Records of M. S. Circuit
Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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GUY V. SHOUP, Flood Building, San Fran-
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cisco, California.

T. S. MINOT, Phelan Building, San Francisco,
California.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 2028.

J. I. LAMPRECHT et al., Trustees,

Appellants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Appellees.

Stipulation as to Contents of Printed Record.

It is hereby stipulated and agreed by and between
said appellants and Southern Pacific Railroad Com-
pany and The Kern Trading and Oil Company, ap-
pellees, by their respective solicitors, that the printed

record on appeal of said appellants in this cause may consist of the contents of the original transcript on appeal, now on file in the office of the Clerk of said court, which is composed of copies of the following pleadings and papers, appearing in said original transcript at the pages herein specified, viz.:

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It is likewise stipulated and agreed that this stipulation shall not have the effect of depriving the appellees of the right to show, as affecting costs, that said printed record contains matter not necessary to the proper consideration of said cause.

Dated September 8th, 1911.

DELBERT J. HINKLEY,

Solicitors for Appellants, 1008 Wright & Callender Building, Los Angeles, California.

WM. SINGER, Jr.,
GUY V. SHOUP and
D. V. COWDEN,

Solicitors for Appellees, Flood Building, San Francisco, California.

[Endorsed]: No. 2028. United States Circuit Court of Appeals for the Ninth Circuit. J. I. Lam-

4 *J. I. Lamprecht and F. M. Aiken, Trustees,*
precht et al., Trustees, Appellants, vs. Southern
Pacific Railroad Company et al., Appellees. Stipu-
lation as to Contents of Printed Record. Filed Sep.
12, 1911. F. D. Monckton, Clerk.

[Citation (Original).]

UNITED STATES OF AMERICA.

To Southern Pacific Railroad Company, a Corpora-
tion, The Kern Trading & Oil Company, a Cor-
poration, and T. S. Minot, Greeting:

You are hereby cited and admonished to be and
appear in the United States Circuit Court of Appeals
for the Ninth Circuit, at the City of San Francisco,
thirty (30) days from and after the day this Cita-
tion bears date, pursuant to an appeal allowed filed
in the Clerk's Office of the Circuit Court of the United
States for the Southern District of California, North-
ern Division, wherein J. I. Lamprecht and F. M.
Aiken, Trustees, are appellants and you are appellees,
to show cause, if any there be, why the decree ren-
dered against said appellants as in said appeal men-
tioned, should not be corrected and speedy justice
should not be done to the parties in that behalf.

Witness the Honorable WILLIAM W. MORROW,
Judge of the Circuit Court of Appeals for the Ninth
Circuit, this 30th day of June, 1911.

WM. W. MORROW,
Circuit Judge.

Service of the within Citation is hereby acknowl-
edged to have been made upon the cross-defendants
Southern Pacific Railroad Company and Kern Trad-

ing and Oil Company, by delivery of a true copy thereof to their attorneys of record on the 11th day of July, 1911.

WM. SINGER, Jr.,
GUY V. SHOUP and
D. V. COWDEN,

Attorneys for Southern Pacific Railroad Company
and Kern Trading and Oil Company.

Service of the within Citation is hereby acknowledged to have been made upon the cross-defendant T. S. Minot, by delivery of a true copy thereof to his attorney of record on the 11th day of July, 1911.

T. S. MINOT,

In Pro. Per.

Attorney for T. S. Minot.

United States Marshal's Office,
Northern District of California.

I hereby certify that I received the within Citation on the 11th day of July, 1911, and under instruction from D. J. Hinkley, one of the solicitors for the Cross-complainants herein. I served the same upon the Southern Pacific Railroad Company, a corporation, and The Kern Trading & Oil Company, a corporation, by handing to and leaving a copy hereof with D. V. Cowden, who is one of the attorneys for the said Southern Pacific Railroad Company, a corporation, and by leaving a copy hereof with D. V. Cowden, who is one of the attorneys for the said Kern Trading & Oil Company, a corporation, as shown by the acknowledgment of service endorsed by said D. V. Cowden on this Original Writ. Said service was made on the 11th day of July, 1911, personally, in

6 *J. I. Lamprecht and F. M. Aiken, Trustees,*
the City and County of San Francisco, in the State
and Northern District of California.

I further return that I served the within Citation upon T. S. Minot by handing to and leaving a copy hereof with said T. S. Minot personally on the 11th day of July, 1911, in the City and County of San Francisco, in said District, as shown by the acknowledgment of service endorsed by said T. S. Minot on this Original Writ.

Dated at San Francisco, California, this 11th day of July, 1911.

C. T. ELLIOTT,
United States Marshal,
By B. F. Towle,
Office Deputy Marshal.

[Endorsed]: Marshal's Docket No. 5347: No. 192.
In the Circuit Court of the United States for the
Southern District of California, Northern Division.
In Equity. Edmund Burke, Complainant, vs. Southern
Pacific R. R. Co. et al., Defendants, and J. I.
Lamprecht and F. M. Aiken, Trustees, Cross-com-
plainants, vs. Southern Pacific R. R. Co., the Kern
Trading & Oil Co. et al., Cross-defendants. Citation.
Filed Jul. 15, 1911. Wm. M. Van Dyke, Clerk. By
Chas. N. Williams, Deputy Clerk.

*In the Circuit Court of the United States of America,
of the Ninth Judicial Circuit, in and for the
Southern District of California, Northern Di-
vision.*

No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
et al.,

Defendants,

and

JOHN I. LAMPRECHT and F. M. AIKEN,
Trustees,

Cross-Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
a Corporation, THE KERN TRADING &
OIL COMPANY (a Corporation), and T. S.
MINOT et al.,

Cross-Defendants. [1*]

*Page number appearing at foot of page of original certified Record.

[Stipulation as to Filing Amended Bill of Complaint.]

*In the Circuit Court of the United States for the
Southern District of California, Northern Di-
vision.*

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendants.

It is hereby stipulated and agreed, by and between the defendants herein, that is, those represented by T. S. Minot, as their solicitor, and said complainant, that said complainant may file and serve an amended bill of complaint in this suit on or before the first day of November, 1910, and that the demurer by said defendants, represented by said T. S. Minot, to the original bill of complaint herein, may stand as their demurer to such amended bill when filed and served as aforesaid, unless an amended demurrer to new facts be required, and that the hearing of said demurer may be had November 21, 1910, or as soon thereafter as counsel can be heard.

T. S. MINOT,

EDMUND BURKE,

In Pro. Per.

October 26th, 1910. [2]

[Endorsed]: No. 192. In the Circuit Court of the United States for the Southern District of California, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific Railroad Company et al., Defendants. Stipulation. Filed Oct. 27, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. [3]

*In the Circuit Court of the United States, in and for
the Southern District of California, Northern
Division.*

EDMUND BURKE,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, The Kern Trading and Oil Company, Thomas W. Newlin, W. H. Layson, N. W. Spaulding, F. D. Culver, C. F. Bassett, Henry C. Bunker, Mary Ann Heddon, A. R. Cotton, Daniel E. Rayes, E. M. Root, Jarvis L. Doyle, E. N. Richardson, Hattie E. Miner, Helen Pollock, George A. Doyle, B. Block, Loretta B. Hart, Annie M. Fassett, Merrill D. Evans, William Miner, J. V. Ellis, Mary A. Hedden, Leonara J. Evans, Oregon Sanders, James Hedden, E. M. Redding, J. R. Manran, William Polloak, Joseph Hart, E. S. Payne, Mary J. Hida, Albert Betz, A. L. Frick, M. J. Frick, S. L. Phillips, E. Phillips, M. E. Wall, E. N. Dunweedie, Barclay McGowan, John Doe, Rochard Roe, Thomas Green, Henry Doe,

James Doe, Edward Roe, Peter Doe, Dolly Doe, Frank Doe, Joseph Doe, Jacob Doe, Isaac Doe, Katy Doe, Harry Doe, Davis Doe, Duke Doe, Minnie Doe, Bunny Doe, Jerry Doe, McGowan Doe, Grant Doe, Platt Roe, George Morton, Jno. I. Lamprecht and F. M. Aiken as Trustees, George D. Roberts, Q. L. Phelps, James Meynard Jr., A. M. Anderson, T. S. [4] Minot, Newton A. Johnson, David Ewing, D. M. Speed, Wm. Johnson, S. J. Gallagher, O. D. Loftus, Willis George Emerson, W. W. Ayres, H. E. Ayres, W. J. Thomas, D. J. Hinkley, Charles James, Chulk Roberts, Robert Rendall, Henry C. Kerr, George Engle, James Ward, J. L. D. Walp, T. J. Turner, Fred E. Windsor, M. J. Corey, P. W. Cypher, G. W. Wainer, Cheud Burnes, W. H. Truzer, David Ishman, Ash Seince, Frank Provost, Samuel Murshback, H. R. Crozier, J. M. Robertson, P. C. Tulyer, Henry Greenleaf, R. M. Cook, I. W. Alexander, J. W. Swartzhammer, Henry Bamada, E. M. Ayres, John W. Burdelle, Walter Baun and E. M. Scott,

Defendants.

Amended Bill [of Complaint].

To the Judges of the Circuit Court of the United States for the Southern District of California.

Edmund Burke, a citizen and resident of the State of California, brings this his Bill of Complaint against the above-named defendants. And thereupon your orator complains and says:

1. That at all times hereinafter mentioned, the

defendant, The Southern Pacific Railroad Company, was and is a corporation, created and existing pursuant to the laws of the State of California, and had and has its principal office at the City of San Francisco, in the State of California.

2. That The Kern Trading and Oil Company, for the last five years has been, and now is a corporation created and existing [5] pursuant to the laws of the State of California, and has its principal office at the city of San Francisco, in the State of California, and always has been, and now is wholly owned, dominated, controlled and operated by The Southern Pacific Railroad Company, for the ulterior purpose of doing certain things which, by law, the said The Southern Pacific Railroad Company is prohibited from doing, to wit: Mining for petroleum and other minerals, and dealing with the same as a commodity, and claiming, for the benefit of The Southern Pacific Railroad Company, as an alleged lessee of the said Southern Pacific Railroad, the certain prohibited and interdicted mineral lands hereinafter referred to; the said The Kern Trading and Oil Company does the things and makes the illegal claims and demands hereinafter set forth, against the complainant, and the lands herein described, and all of which is to the prejudice and damage of this complainant, as hereinafter appears and is set forth.

3. That the complainant, subject only to the paramount title of the United States, is the owner and entitled to the possession of all of Sections 11, 13, 23, 33, Township 19 South, Range 15 East, M. D. B. & M., Fresno County, California, and all of Section 5 in

Township 20 South, Range 15 East, M. D. B. & M., Fresno County, California, as placer mining claims, under the mining laws of the United States, to the extent of one-tenth (1/10) undivided interest in each and all of the same.

4. That all of the above-described lands were known mineral lands and have been subject to location under the mining [6] laws of the United States and under the local rules, customs and usages prevailing in the State of California, and the Mining District in which said lands are situate, since the 1st day of January, 1865.

5. That all of the same, and each and every legal subdivision thereof, now is and at all times has been mineral land of great value, containing minerals in commercial quantities, and all of which was known to the above-named defendant, The Southern Pacific Railroad Company, its agents, officers and servants, since prior to the 1st day of January, 1865.

6. That on July 27th, 1866, the Congress of the United States passed a certain act making a grant of the public lands of the United States to the defendant, The Southern Pacific Railroad Company, and that Section 3 of said Act of July 27th, 1866, is in the words and figures as follows, to wit:

“SECTION 3. And be it further enacted, that there be and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph lines to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, and

munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections of land per mile on each side of said railroad, whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is [7] designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; and whenever prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, all under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided further, that the Railroad Company receiving the previous grant of land may assign their interest to said Atlantic and Pacific Railroad Company, or may consolidate, confederate, and associate with said Company, upon the terms named in the 1st and 17th sections of this Act; provided, further, that all mineral lands be, and the same are hereby excluded from the operations of this Act, and in lieu thereof, a like

quantity of unoccupied and unappropriated agricultural lands in odd numbered sections, nearest to the line of said railroad, and within twenty miles thereof, may be selected as above provided. And provided, further, that the word 'mineral' when it occurs in this Act, shall not be held to include iron and coal. And provided, further, that no money shall be drawn from the treasury of the United States to aid in the construction of the said Atlantic and Pacific Railroad."

7. And your orator further says that Section 18 of said Act is in the words and figures following, to wit: [8]

"SECTION 18. And be it further enacted, that The Southern Pacific Railroad Company, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this Act, at such point near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have uniform gauge and rate of freight and of fare with said road; and in consideration thereof to aid in its construction shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

And that a construction and interpretation of Sec-

tions 3 and 18 of said Act, and of all acts and joint resolutions amendatory thereof, and supplemental thereto, covering and embracing the lands herein described, is involved in this suit and requires the construction of the Court.

8. That thereafter, and by virtue of a joint resolution of Congress, approved June 28th, 1870, certain conditions were expressly imposed and prescribed, by and under which said railroad and telegraph lines should be constructed and under what terms and conditions and limitations, patents should be issued by the Secretary of the Interior to defendant, The Southern Pacific Railroad Company, for said granted lands, and said joint resolution was, and is, in the words and figures as follows, to wit:

“BE IT RESOLVED by the Senate and the House of Representatives of the United States of America in Congress assembled, That The Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed [9] by said Company in the Department of the Interior on the third day of January, Eighteen Hundred and Sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the Company to the Secretary of the Interior, he shall direct an examination of each such Section of Commissioners to be appointed by the President, as provided in the act, making a grant of said Company, approved July twenty-seventh, Eighteen

Hundred and Sixty-six, and upon the report of the Commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said Company for the sections of land coterminus to each constructed section reported on as aforesaid, to the extent and amount granted to said Company by the said Act of July 27th, 1866, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said Act, approved June 18th, 1870."

9. That on July 10th, 1894, a patent purporting to convey certain lands, yet excepting and excluding the above described lands, issued from the United States to The Southern Pacific Railroad Company, and was accepted by the said The Southern Pacific Railroad Company, and recorded in the office of the Recorder of the County of Fresno, in the State of California, on the — day of —, 1894, by said The Southern Pacific Railroad Company; that attached hereto is a copy of said alleged patent, marked Exhibit "A," omitting only the description of other lands not involved herein, and which is hereby referred to and made a part of this bill. [10]

10. That prior to the 9th day of July, 1892, all of the said lands mentioned and described herein were covered by valid subsisting mining locations made theretofore by divers citizens of the United States, pursuant to the mining laws of the United States, and

said several and divers mining locations were made by said divers citizens of the United States after a discovery of mineral on each of said mining claims embraced therein and at the time of the issuance of said alleged patent were not public lands subject to sale and disposal, or within the jurisdiction of the Interior Department of the United States, and said lands were not the property of the United States, and not within the power of the United States to dispose of the same, but were segregated from the public domain, the beneficial title thereto being in said mining locators, and the legal title thereto being held in trust by the United States for said locators, or for their successors, heirs or assigns.

11. That all of said mining locations, prior to the issuance of said patent, and prior to the application of the said The Southern Pacific Railroad Company for patents, as hereinafter set forth, had been duly recorded in the office of the Recorder of the Mining District of Coalinga, in the County of Fresno, in the State of California, of all of which the said The Southern Pacific Railroad Company, its officers, agents and servants had due notice; that said Coalinga Mining District had been organized theretofore in pursuance to law, and was the proper place for record of said mining locations, of all of which the said The Southern Pacific Railroad Company had had knowledge prior to the issuance of said alleged patent.

12. That notwithstanding said knowledge and notice, and notwithstanding that the said The Southern Pacific Railroad Company, its officers, agents and

servants, well knew all the lands [11] herein described were mineral lands, and lands on which there were valid subsisting mining locations of record as aforesaid, and that the said The Southern Pacific Railroad Company was not entitled to a grant of the same, and that the said lands were precluded from the operation of said grant, the said The Southern Pacific Railroad Company did falsely and corruptly cause one Jerome Madden, its then land agent, on or about the 9th day of May, 1892, to make, and he did make, the certain false, wicked, corrupt and fraudulent affidavit and application in manner following, that is to say:

“STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO.

I, JEROME MADDEN, being duly sworn, depose and say that I am the land agent of the Southern Pacific Railroad Company; that the foregoing lists of land which I hereby select, is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company, as inuring to it, to aid in the construction of the railroad of said Company, from a point in the northeast quarter of Section 2, Township 19 South, Range 20 East, M. D. B. & M. to Alcalde, for which a grant of lands was made by the Acts of Congress approved July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid, and that said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits

of twenty miles on each side of the line of route for a continuous distance of forty 559/1000 miles, being for the 9th and 17th sections of said road, starting from a point in the northeast quarter Section 2, Township 19 South, Range 20 East, M. D. B. & M., and ending at a point in the northeast quarter Section 23, Township [12] 21 South, Range 14 East, M. D. B. & M.

(Signed) JEROME MADDEN.

Sworn to and subscribed before me this 9th day of May, 1892.

Witness my hand and notarial seal.

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, in the State of California."

13. That thereafter, and pursuant to said affidavit so made as aforesaid, for the purposes aforesaid, there was issued to The Southern Pacific Railroad Company the alleged patent hereinbefore referred to.

14. That on the —— day of ———, 1894, the Honorable G. W. Lamoreaux, Commissioner of the General Land Office, and Honorable Hoke Smith, Secretary of the Interior, approved said application, but therein it was expressly provided that there should be excluded from the approval, and from the transfer in the patent that was to issue:

"All mineral lands should any such be found in the tracts aforesaid, but the exception, according to the terms of the statute was not to be construed to include iron and coal."

15. And thereupon the said alleged patent issued as aforesaid.

16. Your orator further says and shows unto your Honors that the defendant, The Southern Pacific Railroad Company, did assent to all of the terms and conditions of said Act of Congress, approved July 27th, 1866, and the joint resolution of June 28th, 1870, and they did wholly submit to and accept the terms and [13] conditions of said Acts, and did agree that The Southern Pacific Railroad Company, and its assigns and successors and all persons then or now in privity with it, should recognize, respect and be held by the reservation, exception and exclusion of all mineral lands contained in said grant, and that such alleged patent containing such exclusion, exception and reservation did not convey to the said defendant, The Southern Pacific Railroad Company, the lands hereinbefore described, or any part thereof, and that said exception, exclusion and reservation was a term of description which was accepted by the said The Southern Pacific Railroad Company at the time of the issuance of said patent.

17. That the lands in controversy are not within the limits of twenty miles of the line of the railroad of said defendant, The Southern Pacific Railroad Company, and are not coterminus with any completed twenty-five mile section of the line of railroad of said The Southern Pacific Railroad Company, and that the railroad, to aid in the construction of which said grant of lands was made, has never been completed, and that all the lands herein described lie opposite to and coterminus with an uncompleted twenty-five mile section of said railroad; and in respect to this subject, your orator alleges that a con-

struction by this Court of Sections 4 and 6 of the said Act of July 27th, 1866, is involved. Your orator alleges that said patent was issued without jurisdiction on the part of the Land Office of the United States and in contravention of Section 4 of said Act of July 27th, 1866, and said lands were certified and approved by the Secretary of the Interior, and said alleged patent issued, wholly without authority of law and in contravention of Section 7 of the Act of March 3d, 1887, and a construction of which Act last aforesaid is involved in this suit.

18. Further reiterating all the foregoing allegations, complainant alleges that said grant and patent did not convey said [14] sections, or any part thereof, and said patent to the said The Southern Pacific Railroad Company was issued by the United States, and accepted by the said The Southern Pacific Railroad Company with said exception and reservation, expressly excepting, precluding and excluding all mineral lands that might at any time be found therein, and that the said The Southern Pacific Railroad Company accepted the same with such exception and reservation. And your orator further alleges that at the time of the making of said grant, and the issuance of said patent, and prior thereto, and ever since, said lands and sections, and each legal subdivision thereof, were mineral and not agricultural in their character, and that the same was a fact at all of said times of common and current observation, and known to the said The Southern Pacific Railroad Company at all the times herein mentioned, and that, as your orator is informed and believes, and

therefore avers, prior to the issuance of said alleged patent, the said lands have been examined by the Department of the Interior, through its geological department, in manner and form of law, and determined to be mineral lands, and not agricultural in their character, and more valuable for mining than for agricultural purposes.

19. That prior to the 10th day of July, 1894, and subsequent to the 1st day of November, 1891, and on or about the 22d day of May, 1892, the said The Southern Pacific Railroad Company made the application for patents herein referred to, to the Secretary of the Interior, for said sections of land under said Congressional Act, as alleged in the said petition therefor, and for all of the said sections of the public land as therein set forth, and on July 10th, 1894, the said The Southern Pacific Railroad Company received and accepted from the United States, and caused to be recorded in the Office of the Recorder in the County of Fresno, the certain patent as hereinbefore stated, and the said [15] The Southern Pacific Railroad Company under said patent does now assert ownership in fee to each and every legal subdivision thereof, but has never been at any time, or now is in the actual, open, peaceable, notorious, public, and physical possession of any part of the same, and neither at the time of the commencement of this action, nor at any other time were any of the defendants in the actual, open, peaceable, notorious, public and physical possession of the same, or any part of the same, but at all times, since the making of said grant of July 27th, 1866, the said lands have

been wild, open, unoccupied, unappropriated lands, free from any physical sign of any claim of domination or ownership by any of the defendants herein.

20. And your orator further alleges that at no time did the locators of said mining lands, who made mining locations on the same prior to the 10th day of July, 1894, receive notice of the said application of the said The Southern Pacific Railroad Company for said patent, and there was no notice of hearing in the Land Office, and no opportunity was given to the said locators, or any of them, to contest the application of the said The Southern Pacific Railroad Company for a patent to said land as aforesaid, and there was no hearing in the Land Office, or in the Department of the Interior, to determine the mineral or agricultural character of any of the legal subdivisions of the land herein described, and that the said patent issued without any such determination, and said patent expressly reserving the determination of the quality of said lands for the subsequent consideration of a court of equity having jurisdiction over the subject matter of the same. And the said patent issued while the said mining locations and claims were in full force and effect and constituting a segregation, exception and reservation of the lands herein described and so located and claimed as aforesaid, [16] and at a time when the locators and claimants were the possessory owners of the same, and all of said lands, and each and every part of the same, were at said time within six miles of divers other mining locations, made pursuant to the mining laws of the United States, all of which facts

were then well known to the officers, servants and agents of said The Southern Pacific Railroad Company, and especially to the land agent of the said defendant Railroad Company, and to the said The Southern Pacific Railroad Company, and especially was it known to the said The Southern Pacific Railroad Company, and to its said land agent, that said sections of the public land herein described were not agricultural in character, or more valuable for agricultural than for mining purposes, or that they were of the character contemplated by the said grant to be passed to the said The Southern Pacific Railroad Company, and that all of the same were subject to and covered by valid subsisting mining locations, made by divers qualified locators under the mining laws of the United States, and were within six miles of divers other mining locations on public lands, all of which facts were then knowingly, falsely, fraudulently and corruptly withheld by the said The Southern Pacific Railroad Company, its officers, agents and servants, from the knowledge of the officers of the Land Department of the United States, for the purpose of deceiving the officers of the Land Department of the United States in relation to the mineral and nonagricultural character of said lands, and of the valid and subsisting mining locations thereon as aforesaid. And by reason of the said false, fraudulent and corrupt representations by said persons, and in the manner aforesaid, that said applied for sections of the said land were nonmineral, and agricultural in their character, and that there were no mining locations within six miles of any of

said lands, or upon any of the said lands, said patent was [17] issued by the officers of the Land Department of the United States, in ignorance of the facts, said officers having been deceived by said false and fraudulent representations of the said The Southern Pacific Railroad Company as aforesaid, that said sections were mineral nonagricultural in their character, and of the character contemplated by the grant, as passing to said The Southern Pacific Railroad Company, and more valuable for mining than for agricultural purposes, and were covered by valid and subsisting mining locations, made pursuant to the mining laws of the United States prior to the time of said *ex parte* application of the said The Southern Pacific Railroad Company for a patent thereto, or were within six miles of other valid and subsisting mining locations made on the public lands of the United States, pursuant to the mining laws of the United States, and that at the time of the making of such application for said patent as aforesaid, each quarter section of all of the said sections were, to the knowledge of the said The Southern Pacific Railroad Company, covered by valid subsisting mining locations, made pursuant to the mining laws of the United States, by divers of the above-named defendants, who received no actual or constructive notice of the said false and surreptitious application of the said The Southern Pacific Railroad Company for said patents to said lands, and there was at no time any hearing in the Department of the Interior to determine the mineral or agricultural character of said lands in said sections, of which

said locators of the same or their successors in interest or privies, or assigns or heirs, or representatives, had any actual or constructive notice or knowledge.

21. Reiterating all the foregoing allegations, complainant alleges that the said The Southern Pacific Railroad Company now claims the fee to said sections by reason of the issuance to it of said patent under said grant, which in fact did not convey [18] the said sections to the said defendant Railroad Company, but which in express terms of description conveyed only such alternate odd numbered sections of the public land not mineral, except as to coal and iron, to the amount of ten alternate sections per mile on each side of said railroad on the line thereof nearest to the line of said road and within twenty miles thereof, to be built, maintained and operated by said defendant Railroad Company, between the city of San Francisco and the point of connection with the Atlantic and Pacific Railroad Company near the eastern boundary line of the State of California, which were not sold, reserved, or otherwise disposed of, or to which mining claims had not attached, and yet excluding and excepting all mineral lands, should any such be found in said lands so described in said patent. And which said sections so named as aforesaid were at such time located and claimed mineral lands, and reserved by law from sale or disposal as aforesaid. And this complainant alleges that said patent is null and void, in so far as the claim of title to said sections, or any part thereof, under said patent is asserted by the said The

Southern Pacific Railroad Company, or by The Kern Trading and Oil Company, but that said sections above referred to were reserved, excepted and precluded from the operation of said grant and patent, and that, upon the dates in March, 1909, as hereinafter appears, the said sections were mineral lands of the United States, open to exploration, location, purchase and sale, and that at said time said lands, after examination by the Department of the Interior had been determined and adjudged as mineral lands, bearing mineral in commercial quantities; that said sections are mineral lands, and have, since July 25th, 1866, been more valuable for mining than for agricultural purposes, and were, previous to March, 1909, formally designated by the Department of the Interior, [19] after complete and thorough geological examination, to be lands bearing petroleum in commercial quantities.

22. That on the 2d day of March, 1909, all of Sections 5, 11, 13, 23 and 33, as above described, were open to location under the mining laws *laws* of the United States, the said locators who had made prior locations thereon, having failed to perform, or commence the performance of their annual labor on each or any of the quarter sections thereof for the year 1908, and had not performed the same thereon up to the 3d day of March, 1909, when your complainant, together with the defendants, A. L. Frick, M. J. Frick, S. L. Phillips, E. Phillips, M. E. Wall, B. McGowan, E. M. Dunweddie, entered on said lands and made mining locations on each quarter section thereof, acting as an association of eight persons, pursu-

ant to the mining laws of the United States, and thereby succeeded to all the right, title and interest in and to the quarter section of said section, of the prior mining locators of the discoveries on which said prior mining locations were predicted, and all of said locations, or duplicates thereof, were duly filed in the office of the Recorder of the County of Fresno, in the State of California, on the 6th day of March, 1909.

23. That contemporaneous with the making of said relocations there was a discovery of mineral on each of said locations by said relocators, and prior thereto said land had been properly and legally designated by the Department of the Interior, as lands bearing mineral in commercial quantities, and more valuable for mining than for agricultural purposes.

24. That the said defendants, in addition to the foregoing, claim to have some right, title or interest, in or to said sections, or to some portion thereof, adverse to complainant, but all of the claims of the said defendants, and each of them, are legally invalid, and said defendants have not, either jointly or severally, any legal right, title or interest in and to said [20] section or any part thereof, or in or to any part of the said mining claims now subsisting on the said sections hereinbefore described.

25. That said patent constitutes a cloud on the title of your complainant in and to the above-described land.

26. That the reasonable and market value of each of the said mining claims is upwards of Sixty Thousand Dollars, and that the reasonable and market value of the undivided interest of your orator in each

of said mining claims is upwards of Six Thousand Dollars.

27. That irrespective of, and independent of the lands and mining claims described herein, the said The Southern Pacific Railroad Company has elsewhere received from the United States, under said Congressional grant of July 27th, 1866, more land than it earned thereunder or was entitled to receive thereunder, along and coterminus with the line of its railroad as partially constructed between San Jose, California, to Tres Pinos, California, and from Alcalde, California, to Mojave, California, a distance comprising two hundred and fifty-two and four hundred and seventy-nine thousands of a mile, and thereby the lands herein described were not within the jurisdiction of the General Land Office at the date of said patent, the said Exhibit "A," to convey to said The Southern Pacific Railroad Company, and were precluded from passing thereby or thereunder.

WHEREFORE, your orator prays that a construction and interpretation be had by this Court of Sections 3 and 18 of said Act of Congress, approved July 27th, 1866, and the joint resolution of Congress authorizing, instructing and requiring the Secretary of the Interior of the United States to issue patents to The Southern Pacific Railroad Company, expressly prescribing what said patent should and should not contain, approved June 28th, 1870, and a final order and decree that patent issue, together [21] with the reservation and exception therein contained.

2. That the defendants and each of them be

estopped from claiming any right, title, interest or estate in or to any of the lands involved in this suit.

3. That an interlocutory injunction issue by this Court against each and all of the defendants herein, and all the persons in privity with them, requiring each and all of them to desist from any interference with the property in dispute, claimed herein by your orator, or the minerals therein until the final determination of this suit, and that at that time said injunction be made perpetual.

4. That the complainant have such other and further order and relief as may be just and equitable.

5. That a writ of subpoena of the United States issue, directed to the defendants herein, commanding them on a certain day, and under a certain penalty, to be and appear in this court, and there to answer, without oath, the premises, and to stand by and abide such decree and order as may issue against them.

And further your orator sayeth not.

EDMUND BURKE,

In Pro. Per.

State of California,

County of Los Angeles.

Edmund Burke, being duly sworn, deposes and says that he is the complainant above named; that he has read the foregoing bill, and knows the contents thereof; that the same is true, of his own knowledge, except as to the matters therein alleged on information and belief, and as to those matters, he believes them to be true.

EDMUND BURKE.

Subscribed and sworn to before me, this 26th day of September, 1910.

[Seal]

J. S. McKNIGHT,
Notary Public.

Notary Public in and for the County of Los Angeles,
State of California. [22]

Exhibit "A."

PATENT.

**TO ALL TO WHOM THESE PRESENTS
SHALL COME, GREETING:**

WHEREAS by the Act of Congress approved July 27, 1866, and Joint Resolution of June 28, 1870, "to aid in the construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast" and to secure to the Government the use of the same for Postal, Military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a Railroad and Telegraph Line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said Company, "every alternate section of public land designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said Railroad, on the line thereof, and within the limits of twenty miles on each side of said road" "not sold, reserved, or otherwise disposed of by the United States, and to which

pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

AND WHEREAS, Official statements from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him, that the line of said railroad and telegraph from San Jose to Tres Pinos and from Alcalde to Mojave, together comprising two hundred and fifty-two miles and four hundred and seventy-nine thousandths of a mile has been constructed and fully completed and equipped in the manner prescribed by said Act of July 27, 1866, and accepted by the President. [23]

AND WHEREAS the following tracts have been duly listed under the Act aforesaid by the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original lists of selections approved by the local officers and on file in this office.

AND WHEREAS the said tracts of land lie *coterminus* to the constructed line of said road and are particularly described as follows, to wit:

South of base line and East of Mt. Diablo Meridian, State of California.

Township Nineteen, Range Fifteen.

All of Section 33 containing 640 acres.

(With other land.)

The said tracts as described in the foregoing make the aggregate area of 440,900.85 acres,

NOW, KNOW YE, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, Have Given and Granted and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing. Yet excluding and excepting "All Mineral Lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the Statute, shall not be constructed to include "Coal and Iron Lands."

TO HAVE AND TO HOLD the same with the appurtenances unto the said "Southern Pacific Railroad Company" and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I, GROVER CLEVELAND, President of the United States, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed.
[24]

Given under my hand at the City of Washington, this the Tenth day of July in the year of our Lord One Thousand Eight Hundred and Ninety-four and the Independence of the United States, the one hundred and nineteenth.

By the President: GROVER CLEVELAND.

[Seal]

M. McKEAN,

Secretary.

L. Q. LAMAR,

Recorder of the General Land Office.

Recorded in Vol. 14, pp. 103 to 142, inclusive.

Patent No. 22.

Recorded Feb. 16, 1895, at 8:27 o'clock A. M., in Vol. P. of Patents, page 288 et seq., Fresno County Records.

[Endorsed]: In Equity—No. 192. United States Circuit Court, Southern District of California, Northern Division. Edmund Burke et al., Complainant, vs. The Southern Pacific Railroad Company et al., Defendants. Amended Bill. Original. Filed Oct. 31, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Edmund Burke, in Pro. Per. 616-17 Central Bldg., Los Angeles, California. [25]

**[Cross-Bill of Complaint of John I. Lamprecht and
F. M. Aiken.]**

*In the Circuit Court of the United States, in and for
the Southern District of California, Northern
Division.*

IN EQUITY—Number 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
The Kern Trading and Oil Company, Thomas
W. Newlin, W. H. Layson, N. W. Spaulding,
F. D. Culver, C. F. Bassett, Henry C. Bunker,
Mary Ann Haddon, A. R. Cotton, Daniel E.
Rayes, E. M. Root, Jarvis L. Doyle, E. N.
Richardson, Hattie E. Miner, Helen Pollock,
George A. Doyle, B. Block, Loretta B. Hart,

Annie M. Fassett, Merrill D. Evans, William Miner, J. V. Ellis, Mary A. Hedden, Leonora J. Evans, Oregon Sanders, James Hedden, E. M. Redding, J. R. Manran, William Polloak, Joseph Hart, E. S. Payne, Mary J. Hilda, Albert Betz, A. L. Frick, M. J. Frick, S. L. Phillips, E. Phillips, M. E. Wall, E. N. Dunweedie, Barclay McGowan, John Doe, Richard Roe, Thomas Green, Henry Doe, James Doe, Edward Roe, Peter Doe, Dolly Doe, Frank Doe, Joseph Doe, Jacob Doe, Isaac Doe, Katy Doe, Harry Doe, Davis Doe, Duke Doe, Minnie Doe, Bunny Doe, Jerry Doe, McGowan Doe, Grant Doe, Platt Roe, George Morton, Jno. I. Lamprecht, and F. M. Aiken as Trustees, George D. Roberts, Q. L. Phelps, James Meynard, Jr., A. M. Anderson, T. S. Minot, Newton A. Johnson, David Ewing, D. M. Speed, Wm. Johnson, S. J. Gallagher, O. D. Loftus, Willis George Emerson, [26] W. W. Ayres, H. E. Ayers, W. J. Thomas, D. J. Hinkley, Charles James, Chulk Roberts, Robert Rendall, Henry C. Kerr, George Engle, James Ward, J. L. D. Walp, T. J. Turner, Fred E. Windsor, M. J. Corey, P. W. Cypher, G. W. Wainer, Choud Burnes, W. H. Truzer, David Ishman, Ash Seince, Frank Provost, Samuel Murshback, H. R. Crozier, J. M. Robertson, P. C. Tuyler, Henry Greenleaf, R. M. Cook, I. W. Alexander, J. W. Swartzhammer, Henry Bamada, E. M. Ayers, John W. Burdelle, Walter Baun and E. M. Scott,

Defendants.

To the Judges of the Circuit Court of the United States for the Southern District of California.

Your orators, John I. Lamprecht and T. M. Aiken, bring this their Cross-bill of Complaint against the above complainant and defendants, and thereupon your orators complain and say:

I.

That at all of the times hereinafter mentioned, the defendant, Southern Pacific Railroad Company, has been and is now a corporation created and existing pursuant to the laws of the State of California, having its principal office at the city of San Francisco, in the State of California.

II.

That the Kern Trading and Oil Company, for the last five (5) years, has been and is now a corporation created and existing pursuant to the laws of the state of California, having its principal office at the city of San Francisco, in the State of California, and during all of said time has been and now is [27] wholly owned, dominated, controlled and operated by the said Southern Pacific Railroad Company, for the ulterior purpose of doing certain things which the said Southern Pacific Railroad Company is prohibited by law from doing, to wit: mining for petroleum and other minerals, and buying, selling and dealing in the same as a commodity, and claiming for the benefit of the Southern Pacific Company, as its alleged lessee, the mineral lands hereinafter referred to, all of which is to the prejudice and damage of this *complaint*, as hereinafter appears and is set forth.

III.

That the following described lands, to wit:

All of Section 11, 13, 23 and 33, Township 19 South, Range 15 East, Mount Diablo Base and Meridian, and all of Section 5, Township 20 South, Range 15 East, Mount Diablo Base and Meridian, all situated in Fresno County, California;

are and have been since, to wit: the 1st day of January, 1865, known to be mineral lands of great value, containing mineral in paying quantities and more valuable for mining purposes than for any other purposes; all of which has been known to the Southern Pacific Company, its officers and agents, since, to wit: the 1st day of January, 1865, and to the defendant, The Kern Trading and Oil Company, its officers and agents, since the date of its creation.

IV.

That heretofore the Congress of the United States passed a certain Act, which was approved by the President of the United States, July 27th, 1866, making a grant of public lands of the United States to the defendant, Southern Pacific Railroad Company, and that Section 3 of said Act of Congress, is in the words and figures as follows, to wit: [28]

“Sec. 3. AND BE IT FURTHER ENACTED, That there be, and hereby is, granted to the Atlantic Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails,

troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the Office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: PROVIDED, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as [29] far as the routes are upon the same general line, the amount of land heretofore granted

shall be deducted from the amount granted by this act: PROVIDED FURTHER, That the railroad company receiving the previous grant of land may assign their interest to said 'Atlantic and Pacific Railroad Company,' or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: PROVIDED FURTHER, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: AND PROVIDED FURTHER, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: AND PROVIDED FURTHER, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railroad.' "

V.

Your orators further say and show that Section 18 of said Act of Congress is in words and figures as follows, to wit:

"Sec. 18. AND BE IT FURTHER ENACTED, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near

the boundary line of the State *of the State* of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with [30] said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.”

VI.

Your orators further say and show that Section 4 of said Act of Congress is in words and figures as follows, to wit:

“Sec. 4. AND BE IT FURTHER ENACTED, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath, to the President of the United States, and patents of lands, as aforesaid, shall

be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminus with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United [31] States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid.”

VII.

Your orators further say and show that Section 6 of said Act is in words and figures as follows, to wit:

“Sec. 6. AND BE IT FURTHER ENACTED: That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad, (b) and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this Act; but the provisions of the Act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled ‘An act to secure homesteads to actual settlers on the public domain,’ approved May twenty, eighteen

hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company. (c)"

VIII.

Your orators further say and show that thereafter the Congress of the United States passed a certain joint resolution, which was approved by the President of the United States on the [32] 20th day of June, 1870, which joint resolution is in words and figures as follows, to wit:

“BE IT RESOLVED, etc., That the Southern Pacific Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the Secretary of the Interior that such section of railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said

company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act (a).''

IX.

Your orators further say and show that prior to the 9th [33] day of May, 1892, all of said lands described in paragraph III of this Bill of Complaint were, except for the mining claims hereinafter mentioned, unappropriated public mineral lands of the United States and subject and open to location under the mining laws of the United States, and that prior to said 9th day of May divers citizens of the United States, did, pursuant to the mining laws of the United States and the rules, regulations, customs and usages then in force in the mining district in which said lands were situated, enter upon and locate, as placer mining ground, mining claims of one-quarter section each, all of said lands, after a discovery of mineral made by the locators thereof on each of said mining claims, and that all of said mining locations remained in full force and effect, uncanceled and unforfeited, from the date of their location as aforesaid, until, to wit: the 3d day of March, 1909, whereby all of said lands became and were and continued to be during all of said time, segregated from the public domain.

X.

That the Coalinga Mining District included within its boundaries all of the lands described in paragraph III of this Bill of Complaint, and was organized prior to the 9th day of May, 1892, and that all of said mining locations were duly recorded prior to the 9th day of May, 1892, in the office of the Recorder of said Mining District, which was the proper place for the recording of the same, according to the rules, regulations, customs and usages of the miners of said district; of all of which the said defendants, Southern Pacific Railroad Company and the Kern Trading and Oil Company, their officers and agents, have at all times since the recording of the same had notice.

XI.

Your *orator* further say and show, that there was not, at [34] the time of the location of said mining claims as aforesaid, or at the time of the recording of the notice of said locations, as aforesaid, nor has there at any time since, been any rule, regulation, custom or usage of the miners of said Mining District, or any state or federal law, requiring the recordation in the United States Local Land Office at Visalia, California, or in the General Land Office at Washington, D. C., of notice of any mining location made within said Mining District, and that the Visalia Land Office for the Visalia Land District, wherein all of said lands are situated, has never at any time since its organization had or kept any record of mining claims located within said Land District, until such time as locators of such mining claims made application at said Local Land Office

for patents of lands covered by such mining claims; of all of which the said defendant, Southern Pacific Railroad Company, its officers and agents, and the officers and agents of the Interior Department of the United States, and all branches of said Department, have at all times herein mentioned had notice, and of all of which said The Kern Trading and Oil Company, and its officers and agents, have, at all times since the date of its creation, had notice.

XII.

Your *orator* further say and show that notwithstanding said knowledge and notice, and notwithstanding the said Southern Pacific Company, its officers and agents, well knew that all of the lands described in paragraph III of this Bill of Complaint were mineral lands, and lands on which there were valid, subsisting mining locations of record as aforesaid, and that the same had not been granted to the said Southern Pacific Railroad Company, and that it had no right to have or receive the said lands, and that the said lands were expressly excluded from the operations of its said grant, the said Southern Pacific Railroad Company did falsely, fraudently and corruptly cause one Jerome Madden, [35] its then land agent, on or about the 9th day of May, 1892, to make and file, and that he did make and file in the United States Local Land Office at Visalia, California, a certain false, wicked, corrupt and fraudulent affidavit and application for patents of certain lands, including, among others, the lands described in paragraph III of this Bill of Complaint, in manner and

46 *J. I. Lamprecht and F. M. Aiken, Trustees,*
form as follows, to wit:

“STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO.

I, JEROME MADDEN, being duly sworn, depose and say that I am the land agent of the Southern Pacific Railroad Company; that the foregoing lists of land which I hereby select, is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company, as inuring to it, to aid in the construction of the railroad of said company, from a point in the northeast quarter of Section 2, Township 19 south, Range 20 East, M. D. B. & M. to Alcade, for which a grant of lands was made by the Acts of Congress approved July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid, and that said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of twenty miles on each side of the line of route for a continuous distance of forty 559/1000 miles, being for the 9th and 17th sections of said road, starting from a point in the northeast quarter Section 2, Township 19 South, Range 20 East, M. D. B. & M. and ending at a point in the northeast quarter, [36] Section 23, Township 21 South, Range 14 East, M. D. B. & M.

(Signed) JEROME MADDEN.

Sworn to and subscribed before me this 9th

vs. The Southern Pacific Railroad Co. et al. 47
day of May, 1892. Witness my hand and notarial seal.

E. B. RYAN,
Notary Public in and for the City and County
of San Francisco, in the State of California.”

And your *orator* allege and aver that said affidavit of said Madden, made and filed as aforesaid, was and is false, in that it states relative to all the lands included in the list to which it refers, that they were unappropriated and not interdicted mineral or reserved lands, while in fact the lands described in paragraph III of this Bill of Complaint, which were all included in said list, were, at the time of making and filing of said affidavit, appropriated as placer mining ground, and were all interdicted mineral and reserved lands.

XIII.

Your orators further say and show that prior to the 14th day of May, 1892, the defendant, Southern Pacific Railroad Company, made said *ex parte* application to the Interior Department of the United States, through the Local Land Office at Visalia, California, for patent to all of the lands described in the list of lands referred to in said affidavit made by said Jerome Madden as aforesaid, but did not in said application or otherwise ask to have the mineral or nonmineral character of said lands, or any thereof, determined before issuance of the patent which it sought in said *ex parte* application, and that thereafter, and on, to wit, the 14th day of May, 1892, the Register and Receiver of said Local Land Office

did certify that they had examined said list of lands and tested the accuracy thereof by the plats and records of their office; that they found the same to be correct; [37] that the filing of said list of lands was allowed and approved; that the whole of said lands were surveyed public lands of the United States and within the limits of twenty miles on each side of the line of said road, and that the same were not nor was any part thereof returned and denominated as mineral lands nor claimed as swamp lands, and that there was not any homestead pre-emption, State or other valid claim to any portion of said lands on file or on record in said Local Land Office.

XIV.

Your orators further say and show that thereafter, and prior to, to wit, the 27th day of June, 1894, the officers of the General Land Office examined said list of lands in connection *i* with the records and plats of that office, upon said *ex parte* application, and found, among other things, that said lands fell within the twenty mile lateral limits of said road, and that they were, so far as the records of the General Land Office shows, "free from conflict"; but your orator alleges and shows that the officers and agents of the Interior Department had not theretofore had, for the examination of said lands, sufficient opportunity to determine whether any or all of them were or were not mineral lands, or to justify a statement by them in the patent of the United States that said lands were nonmineral, and that neither the officers of the Local Land Office at Visalia, nor the officers of the General Land Office, ever found or determined that

any of said lands were nonmineral in character, or attempted to decide or did decide whether any of said lands were or were not mineral lands. And thereupon the then Commissioner of the General Land Office did, in conformity with the rulings and decisions of the Interior Department which were then in full force and effect, and which had obtained and been followed by the officers of that Department in such cases for many years, to wit, forty years recommend to the then Secretary of the Interior as follows, to wit: [38]

“It is hereby recommended that the tracts described,” (in said list) “covering 440,900.85 acres, be approved and carried into patent as the lands falling within the grant by the act aforesaid to the said Southern Pacific Railroad Company of California, excluding, however, from the approval and from the transfer in the patent that may be issued, ‘All Mineral Lands,’ should any such be found in the tracts aforesaid; but this exclusion according to the terms of the statute, ‘shall not be construed to include coal and iron.’

G. W. LAMOREAUX,
Commissioner.”

And your orators allege and show that said recommendation of said Commissioner of the General Land Office was thereupon approved by the then secretary of the Interior, in words and figures as follows, endorsed upon said recommendation, to wit:

“Approved: covering four hundred and forty

50 *J. I. Lamprecht and F. M. Aiken, Trustees,*
thousand, nine hundred and eighty-five hundredths of an acre.

HOKE SMITH, Secretary.”

And your orators allege and show that there was no other further finding, determination, certification or recommendation made by any officer of the Interior Department at any time as to the character of any of the lands embraced in said list, and which were afterwards included in the alleged patent hereinafter mentioned, as to their being or not being mineral lands.

XV.

Your orators further say and show that thereafter and in pursuance of and in conformity with the said recommendation of the Commissioner of the General Land Office and said approval thereof by the said Secretary of the Interior, the officers of the Interior [39] Department who were charged by law with the duty of preparing and issuing patents to lands due to be issued by the United States, did, on, to wit, the 10th day of July, 1894, prepare, execute, issue and deliver to the said defendant, Southern Pacific Railroad Company, a certain alleged patent, a true copy of which, excepting only the descriptions of other lands not involved in this suit, is hereto attached, marked Exhibit “A,” and made a part of this Bill of Complaint, wherein was set forth all of said list of lands listed by said the Southern Pacific Railroad Company for patent under said grant upon its said *ex parte* application, and that immediately following said list of lands in said patent is the entire

granting clause of said alleged patent, which is in words and figures as follows, to wit:

“NOW KNOW YE, That the United States of America, in consideration of the premises and pursuant to the acts of Congress, have given and granted, and by these presents do give and grant unto the Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of *of* land selected as aforesaid, and described in the foregoing.

Yet excluding and excepting ‘All Mineral Lands,’ should any such be found in the tracts aforesaid; but this exclusion and exception according to the terms of the statute shall not be construed to include ‘coal and iron lands.’

TO HAVE AND TO HOLD the same, with the appurtenances, unto the said Southern Pacific Railroad Company, and to its successors and assigns forever.” [40]

XVI.

Your orators further say and show to the Court that at no time during the pendency of said *ex parte* application for patent of said lands, was any notice, constructive or actual, given to any of the locators of said prior mining locations, of the application of the said Southern Pacific Railroad Company for patent to said lands, nor was there any publication of such notices, nor was there any hearing ordered or had in the Interior Department, or in any branch thereof, for the purpose of allowing any persons having mining claims or other claims on any of said lands, to be heard and have their rights in or to any

of said lands examined or determined, and said list of lands was certified as aforesaid, without any opportunity being given to any of said prior mining locators of any of said lands to be heard in defense of their rights to any of said lands under said mining locations, and the officers of the Land Department never acquired jurisdiction to conceal, and never did conceal, said mining locations, and never acquired jurisdiction otherwise to defeat or in any wise affect any rights of the locators thereof thereunder, and never attempted or presumed to or did molest or interfere in any way whatsoever with such rights.

XVII.

Your orators further say and show unto the Court that the said Southern Pacific Railroad Company, with full knowledge of all the facts and circumstances herein stated and alleged, did, for itself, its successors and assigns forever, accept and assent to and submit to and agree to be bound by each and all of the provisions, stipulations, terms, conditions, restrictions, limitations, exclusions and reservations in said Act and joint resolution, and said patent, or either or any of them, contained, and so accepting the same and assenting and submitting thereto and agreeing to be bound thereby, did receive and accept [41] said alleged patent and cause the same to be recorded in the office of the Recorder of the County of Fresno and State of California, and that said defendant, Southern Pacific Railroad Company, and all persons claiming any interest in said lands, or any part thereof, under or through it by virtue of said Act of Congress and joint resolution and said patent, or

either of them, are bound by all of said provisions, stipulations, terms, conditions, restrictions, limitations, exclusions, exceptions, and reservations, and are in equity and in conscience estopped to resist or deny the binding force and effect of the same, or any part of any thereof.

XVIII.

Your orators further say and show that the lands described in paragraph III of this Bill of Complaint are not within the limits of twenty miles of any completed section of twenty-five consecutive miles of the line of the railroad of said defendant, Southern Pacific Railroad Company, and are not coterminous with any completed section of twenty-five consecutive miles of the line of the said railroad, and that the railroad to aid in the construction of which said grant of lands was made, has never been completed, and that all of the lands described in paragraph III of this Bill of Complaint lie opposite to and coterminous with an uncompleted section of twenty-five consecutive miles of said railroad line, and that prior to the certification of said list of lands and the issuance of said alleged patent as aforesaid, the said Southern Pacific Railroad Company had received from the United States, for the construction of its said railroad, land to the amount of more than ten alternate odd-numbered sections per mile for all the railroad it has ever constructed under its grant, and that said alleged patent was illegally issued, and was issued without any jurisdiction on the part of any officer of the United States, or any Department thereof, to issue the [42] same, and was issued in violation

and in contravention of the provisions of Section 4 of said Act of July 27th, 1866; and your orator alleges and avers that said recommendation of said list of lands for patent by the Commissioner of the General Land Office, and said approval thereof by said Secretary of the Interior, and the issuance of said alleged patent, were all wholly without authority of law and in contravention and violation of the 7th Section of the Act of March 3d, 1887, and that said certification and said alleged patent were and ever have been inoperative, void and of no effect.

XIX.

Your orators further allege and show that the lands described in paragraph III of this Bill of Complaint were, on, to wit, the 3d day of March, 1909, vacant, unappropriated public mineral lands belonging to the United States, except for the mining locations theretofore made thereon, as alleged in paragraph IX of this Bill of Complaint, and that on, to wit, the 3d day of March, 1909, no annual assessment work for the year of 1908 had been done or commenced on any of said prior mining claims, and said lands were open to re-location as placer mining grounds, and that on, to wit, the 3d day of March, 1909, this complainant, and A. L. Frick, N. J. Frick, S. L. Phillips, E. Phillips, M. E. Wall, B. McGowan and E. M. Dunweedie, acting as an association of eight persons, entered on said lands and relocated each quarter section thereof as placer mining ground, under and in accordance with the mining laws of the United States and the rules, regulations and customs

of miners in the district where said lands are situated, and posted upon each of said quarter sections so relocated the notice of such relocation required by law to be posted, and did thereafter and on, to wit, the 6th day of March, 1909, cause copies of each of said relocation notices to be [43] duly recorded in the office of the Recorder for the county of Fresno, State of California, which was then the proper and lawful place for the recordation of mining locations made within said county where said lands are situated, and did thereby succeed to all the right, title and interest of said prior mining locators in and to all of said lands and to the discoveries on which said prior mining locations were predicated.

XX.

That contemporaneous with the making of said relocations, there was a discovery of mineral by said relocators on each quarter section or one hundred and sixty acre tract of said land, and prior thereto said land had been properly and legally examined by the Department of the Interior and designated by it as lands bearing mineral in commercial quantities and more valuable for mining purposes than for any other purpose.

XXI.

You orators further say and show that said defendant, Southern Pacific Railroad Company, had never, prior to the beginning of this suit, been in actual, open, notorious, exclusive, continuous and hostile possession of any of said lands described in paragraph III of this Bill of Complaint.

XXII.

Your orators further alleges that, subject only to the paramount title of the United States, complainant is the owner and entitled to the possession of all the lands described in paragraph III hereof, as placer mining claims under the mining laws of the United States, to the extent of one-tenth ($1/10$) undivided interest in the whole thereof; that J. I. Lamprecht and F. M. Aiken, Trustees, are the owners in trust for the benefit of a large number of persons, firms and corporations, other than the said defendants, the Southern Pacific Railroad Company and [44] The Kern Trading and Oil Company, and are entitled to the possession of all of said lands described in paragraph III hereof, to the extent of an undivided nine-tenths ($9/10$) thereof, as placer mining claims, subject only to the paramount title of the United States.

XXIII.

Your orators further allege and show that said alleged patent constitutes a cloud upon the said title of your orators in and to said lands, and that the reasonable and market value of each of said mining claims is upwards of Sixty Thousand Dollars (\$60,000.00), and that the reasonable and market value of your orator's said undivided interest in each of said mining claims is upwards of Fifty Thousand Dollars (\$50,000.00).

XXIV.

Your orator further alleges and shows that the said defendants other than said J. I. Lamprecht and F. M. Aiken, Trustees, claim to have some right, title or

interest in or to said premises described in paragraph III hereof, or to some portion thereof, adverse to this complainant, but all such claims are illegal and invalid, and they have not, either jointly or severally, any right, title or interest in or to the same, or any part thereof, or in or to any part of the said mining claims now subsisting thereon,

WHEREFORE, your orators pray :

1st. That a construction and an interpretation be made by this Court in this suit of Section 3, 4, 6, and 18, of said Act of Congress approved July 27th, 1866, and of the joint resolution of Congress approved June 28th, 1870, and all the other Acts of Congress mentioned in this Bill of Complaint, in relation to their application to the facts and circumstances stated and alleged in this Bill of Complaint. [45]

2nd. That a construction and interpretation be made by this Court in this suit of the recommendation of the Commissioner of the General Land office for the certification and approval by the Secretary of the Interior of the said list of lands, and of the approval by the Secretary of the Interior of said recommendation as set forth and alleged in this Bill of Complaint, and also of said patent, including the claims in said alleged patent excepting and excluding all mineral lands from conveyance by said alleged patent.

3rd. That all of said defendants and said complainant be required to set forth the nature of their respective claims in and to the property described in paragraph III of this Bill of Complaint, and that all claims of said defendants and said complainant in or to said lands and said mining claims, adverse to your

orator, may finally be determined by decree of this Court in this suit.

4th. That it may be ordered, adjudged and decreed by this Court in this suit, that none of said defendants, except J. I. Lamprecht and F. M. Aiken, Trustees as aforesaid, have any right, title or interest in or to said lands described in paragraph III of this Bill of Complaint, or in any part thereof, or in or to said mining claims, or any thereof, and that they and each and all of them are, and that they be estopped from claiming any right, title or interest in or to the same, and that the complainant's title to said lands be quieted.

5th. That an interlocutory injunction in due form be issued by this Court, directed to each and all of the defendants herein, except the said defendants J. I. Lamprecht and F. M. Aiken, Trustees as aforesaid, commending them, and each of them, [46] and all other persons in privity with them, to refrain and desist from any interference with the property described in paragraph III of this Bill of Complaint, or the minerals therein, and from interfering with complainant's possession thereof, until the final determination of this suit, and that upon final hearing therein said injunction may be made perpetual.

6th. That your orator may have such other, further and different relief, order or decree, the premises being considered, as to the Court may seem just and equitable.

7th. That a writ of subpoena of the United States issue, directed to each of the defendants herein, commanding them, on a certain day and under a certain

penalty, to be and appear in this Court and there to answer without oath (the answer under oath being hereby expressly waived) the premises, and to stand by and abide the decree and order as may issue against them.

INGALL W. BULL,

Business Address: 616-17 Central Bldg., Los Angeles, Cal.

Of Counsel.

State of California,
County of Los Angeles,—ss.

Ingall W. Bull, being duly sworn, deposes and says that he is the attorney for the above named cases; that he has read the foregoing Bill, and knows the contents thereof; that the same is true, of his own knowledge, except as to the matters therein alleged on information and belief, and as to those matters, he believes them to be true; that said case—complainants, all nonresidents of Los Angeles County and an absence therefrom.

INGALL W. BULL.

Subscribed and sworn to before me, this 31 day of Oct., 1910.

CORA E. MONTGOMERY, [Seal]
Notary Public, Los Angeles County, State of California. [47]

Exhibit "A."

PATENT.

**TO ALL TO WHOM THESE PRESENTS SHALL
COME, GREETING:**

WHEREAS by the Act of Congress approved

60 *J. I. Lamprecht and F. M. Aiken, Trustees,*
July 27, 1866, and Joint Resolution of June 28, 1870,
“to aid in the construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast” and to secure to the Government the use of the same for postal, Military and other purposes, *wuthority* is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a Railroad and Telegraph Line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said Company, “every slternate section of public land designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said Railroad, on the line thereof, and within the limits of twenty miles on each side of said road” “not sold, reserved, or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed.”

AND WHEREAS, Official statement from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him, that the line of said railroad and telegraph from San Jose to *Tre Pimos* and from *Alcalde* to *Mojave*, together comprising Two Hundred and Fifty Two miles and four hundred and seventy-nine thousandths of a mile has been con-

structed and fully [48] completed and equipped in the manner prescribed by said Act of July 27, 1866, and accepted by the President.

AND WHEREAS the following tracts have been duly listed under the Act aforesaid by the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original lists of selections approved by the local officers and on file in this office.

AND WHEREAS the said tracts of land lie co-terminous to the constructed line of said road and are particularly described as follows, to wit:

South of base line and East of Mt. Diablo Meridian, State of California.

Township Nineteen, Range fifteen.

All of Section 33, containing 640 acres.

(With other land)

The said tracts as described in the foregoing make the aggregate area of 440,900.85 acres.

NOW, KNOW YE, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, Have Given and Granted and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing. Yet excluding and excepting "All Mineral Lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, shall be constructed to include "Coal and Iron Lands."

TO HAVE AND TO HOLD the same with the

appurtenances unto the said "Southern Pacific Railroad Company" and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I, GROVER CLEVELAND, President of the United States, have caused these letters to be made patent and the [49] Seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this the tenth day of July, in the year of our Lord one thousand eight hundred and ninety-four and the Independence of the United States, the one hundred and nineteenth.

By the President: GROVER CLEVELAND,
[Seal]

M. McKEAN,
Secretary.

L. Q. LAMAR,

Recorder of the General Land Office.

Recorded in Vol. 14, pp. 103 to 142, inclusive.

Patent No. 22.

Recorded Feb. 16, 1895, at 8:27 o'clock A. M., in Vol. P. of Patents, page 283 et seq., Fresno County Records.

[Endorsed]: No. 192. In the Circuit Court of the United States for the Southern District of California, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific Railroad Company et al., Defendants. Cross-bill of Complaint of J. I. Lamprecht and F. M. Aiken as Trustees, etc. Filed Oct. 31, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. I. W. Bull. Atty. for Cross-complainants, 616-617 Central Bldg., Los Angeles, Cal. [50]

*In the Circuit Court of the United States, in and for
the Southern District of California, Northern
Division.*

Number 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
The Kern Trading and Oil Company, Thomas
W. Newlin, W. H. Layson, N. W. Spaulding,
F. D. Culver, C. F. Bassett, Henry C. Bunker,
Mary Ann Haddon, A. R. Cotton, Daniel E.
Rayes, E. M. Root, Jarvis L. Doyle, E. N.
Richardson, Hattie E. Miner, Helen Pollock,
George A. Doyle, B. Block, Loretta B. Hart,
Annie M. Fassett, Merrill D. Evans, William
Miner, J. V. Ellis, Mary A. Heddon, Leonara
J. Evans, Oregon Sanders, James Hedden,
EM. Redding, J. R. Manran, William Polloak,
Joseph Hart, E. S. Payne, Mary J. Hida,
Albert Betz, A. L. Frick, M. J. Frick, S. L.
Phillips, E. Phillips, M. E. Wall, E. N. Dun-
weedie, Barclay McGowan, John Doe, Richard
Roe, Thomas Green, Henry Doe, James Doe,
Edward Roe, Peter Doe, Dolly Doe, Frank
Doe, Joseph Doe, Jacob Doe, Isaac Doe, Katy
Doe, Harry Doe, Davis Doe, Duke Doe, Min-
nie Doe, Bunny Doe, Jerry Doe, McGowan
Doe, Grant Doe, Platt Roe, George Morton,
Jno. I. Lamprecht, and F. M. Aiken as Trus-
tees, George D. Roberts, Q. L. Phelps, James

Meynard, Jr., A. M. Anderson, T. S. Minot, Newton A. Johnson, David [51] Ewing, D. M. Speed, Wm. Johnson, S. J. Gallagher, O. D. Loftus, Willis George Emerson, W. W. Ayres, H. E. Ayres, W. J. Thomas, D. J. Hinkley, Charles James, Chulk Roberts, Robert Rendall, Henry C. Kerr, George Engle, James Ward, J. L. D. Walp, T. J. Turner, Fred E. Windsor, M. J. Corey, P. W. Cypher, G. W. Wainer, Choud Burnes, W. H. Truzer, David Ishman, Ash Seince, Frank Provost, Samuel Murshback, H. R. Crozier, J. M. Robertson, P. C. Tuyler, Henry Greenleaf, R. M. Cook, I. W. Alexander, J. W. Swartzhammer, Henry Bamada, E. M. Ayers, John W. Burdelle, Walter Baun and E. M. Scott,

Defendants.

**Answer of J. I. Lamprecht and F. M. Aiken as
Trustee, etc., to Amended Bill.**

To the Judges of the Circuit Court of the United States for the Southern District of California.

Now comes the above-named defendants J. I. Lamprecht and F. M. Aiken and answering the Amended Bill of Complaint herein allege:

I.

That at all of the times hereinafter mentioned, the defendant, Southern Pacific Railroad Company, has been and is now a corporation created and existing pursuant to the laws of the State of California, having its principal office at the city of San Francisco, in the State of California.

II.

That The Kern Trading and Oil Company, for the last five (5) years, has been and is now a corporation created and existing [52] pursuant to the laws of the State of California, having its principal office at the city of San Francisco, in the State of California, and during all of said time has been and now is wholly owned, dominated, controlled and operated by the said Southern Pacific Railroad Company, for the ulterior purpose of doing certain things which the said Southern Pacific Railroad Company is prohibited by law from doing, to wit, mining for petroleum and other minerals, and buying, selling and dealing in the same as a commodity, and claiming for the benefit of the Southern Pacific Company, as its alleged lessee, the mineral lands hereinafter referred to, all of which is to the prejudice and damage of this *complaint*, as hereinafter appears and is set forth.

III.

That the following described lands, to wit:

All of Section 11, 13 23 and 33, Township 19 South, Range 15 East, Mount Diablo Base and Meridian, and all of Section 5, Township 20 South, Range 15 East, Mount Diablo Base and Meridian, all situated in Fresno County, California;

are and have been since, to wit, the 1st day of January, 1865, known to be mineral lands of great value, containing mineral in paying quantities and more valuable for mining purposes than for any other purposes; all of which has been known to the Southern Pacific Company, its officers and agents, since, to wit, the 1st day of January, 1865, and to the

defendant, The Kern Trading and Oil Company, its officers and agents, since the date of its creation.

IV.

That heretofore the Congress of the United States passed a certain Act, which was approved by the President of the United States, July 27th, 1866, making a grant of public lands of the United States to the defendant, Southern Pacific Railroad Company, [53] and that Section 3 of said Act of Congress is in the words and figures as follows, to wit:

“Sec. 3. AND BE IT FURTHER EN-
ACTED, That there be, and hereby is, granted to the Atlantic Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the said United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office

of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: **PROVIDED**, That if said route shall be found upon the line of any other railroad [54] route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act; **PROVIDED, FURTHER**, That the railroad company receiving the previous grant of land may assign their interest to said 'Atlantic and Pacific Railroad Company,' or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: **PROVIDED FURTHER**, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided; **AND PROVIDED**

FURTHER, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: AND PROVIDED FURTHER, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railroad.' "

V.

Your orators further say and show that Section 18 of said Act of Congress is in words and figures as follows, to wit:

"Sec. 18. AND BE IT FURTHER EN-ACTED, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall [55] have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

VI.

Your *orator* further say and show that Section 4 of said Act of Congress is in words and figures as follows, to wit:

"Sec. 4. AND BE IT FURTHER EN-

ACTED, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine, the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminus with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United [56] States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

VII.

Your orators further say and show that Section

6 of said Act is in words and figures as follows, to wit:

“Sec. 6. AND BE IT FURTHER EN-ACTED: That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad, (b) and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this Act; but the provisions of the Act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled ‘An act to secure homesteads to actual settlers on the public domain,’ approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company (c).”

VIII.

Your orators further say and show that thereafter the Congress of the United States passed a certain joint resolution, which was approved by the President of the United States on the 28th day of June, 1870, which joint resolution is in words and [57] figures as follows, to wit:

“BE IT RESOLVED, etc., That the Southern Pacific Company of California may construct its road and telegraph line, as near as may be, on

the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the Secretary of the Interior that such section of railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act (a).''

IX.

Your orators further say and show that prior to the 9th day of May, 1892, all of said lands described in paragraph III of this Bill of Complaint were, except for the mining [58] claims hereinafter mentioned, unappropriated public mineral lands of the

United States and subject and open to location under the mining laws of the United States, and that prior to said 9th day of May, divers citizens of the United States, did, pursuant to the mining laws of the United States and the rules, regulations, customs and usages then in force in the mining district in which said lands were situated, enter upon and locate, as placer mining ground, mining claims of one-quarter section each, all of said lands, after a discovery of mineral made by the locators thereof on each of said mining claims, and that all of said mining locations remained in full force and effect, uncanceled and unforfeited, from the date of their location as aforesaid, until, to wit, the 3d day of March, 1909, whereby all of said lands became and were and continued to be during all of said time, segregated from the public domain.

X.

That the Coalinga Mining District included within its boundaries all of the lands described in paragraph III of this Bill of Complaint, and was organized prior to the 9th day of May, 1892, and that all of said mining locations were duly recorded prior to the 9th day of May, 1892, in the office of the Recorder of said Mining District, which was the proper place for the recording of the same, according to the rules, regulations, customs and usages of the miners of said district; of all of which the said defendants, Southern Pacific Railroad Company and the Kern Trading and Oil Company, their officers and agents, have at all times since the recording of the same had notice.

XI.

Your orators further say and show, that there was not, at the time of the location of said mining claims as aforesaid, or at the time of the recording of the notice of said locations as aforesaid, nor has there at any time since, been any rule, regulation, [59] custom, or usage of the miners of said Mining District, or any State or federal law, requiring the recordation in the United States Local Land Office at Visalia, California, or in the General Land Office at Washington, D. C., of notice of any mining location made within said Mining District, and that the Visalia Land Office for the Visalia Land District, wherein all of said lands are situated, has never at any time since its organization had or kept any record of mining claims located within said Land District until such time as locators of such mining claims made application at said Local Land Office for patents of lands covered by such mining claims; of all of which the said defendant, Southern Pacific Railroad Company, its officers and agents, and the officers and agents of the Interior Department of the United States, and all branches of said Department, have at all times herein mentioned had notice, and of all of which said The Kern Trading and Oil Company, and its officers and agents, have, at all times since the date of its creation, had notice.

XII.

Your orators further say and show that notwithstanding said knowledge and notice, and notwithstanding the said Southern Pacific Company, its officers and agents, well knew that all of the lands de-

scribed in paragraph III of this Bill of Complaint were mineral lands, and lands on which there were valid, subsisting mining locations of record as aforesaid, and that the same had not been granted to the said Southern Pacific Railroad Company, and that it had no right to have or receive the said lands, and that the said lands were expressly excluded from the operations of its said grant, the said Southern Pacific Railroad Company did falsely, *fraudently* and corruptly cause one Jerome Madden, its then land agent, on or about the 9th day of May, 1892, to make and file, and that he did make and file in the United States [60] Local Land Office at Visalia, California, a certain false, wicked, corrupt and fraudulent affidavit and application for patents of certain lands, including, among others, the lands described in paragraph III of this Bill of Complaint, in manner and form as follows, to wit:

“STATE OF CALIFORNIA.

CITY AND COUNTY OF SAN FRANCISCO.

I, JEROME MADDEN, being duly sworn, depose and say, that I am the land agent of the Southern Pacific Railroad Company; that the foregoing lists of land which I hereby select, is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company, as inuring to it, to aid in the construction of the railroad of said company, from a point in the northeast quarter of Section 2, Township 19, South, Range 20 East, M. D. B. & M. to Alcade, for which a grant of lands was made by the Acts of Congress approved July

27, 1866, July 25, 1868, and June 28, 1870, as aforesaid, and that said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of twenty miles on each side of the line of route for a continuous distance of forty 559/1000 miles, being for the 9th and 17th sections of said road, starting from a point in the northeast quarter Section 2, Township 19 South, Range 20 East, M. D. B. & M. and ending at a point in the northeast quarter Section 23, Township 21 South, Range 14 East, M. D. B. & M.

(Signed) JEROME MADDEN.

Sworn to and subscribed before me this 9th day of [61] May, 1892. Witness my hand and notarial seal.

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, in the State of California.”

And your *orator* allege and aver that said affidavit of said Madden, made and filed as aforesaid, was and is false, in that it states relative to all the lands included in the list to which it refers, that they were unappropriated and not interdicted mineral or reserved lands, while in fact the lands described in paragraph III of this Bill of Complaint, which were all included in said list, were, at the time of making and filing of said affidavit, appropriated as placer mining ground, and were all interdicted mineral and reserved lands.

XIII.

Your orators further say and show that prior to the 14th day of May, 1892, the defendant, Southern Pacific Railroad Company, made said *ex parte* application to the Interior Department of the United States, through the Local Land Office at Visalia, California, for patent to all of the lands described in the list of lands referred to in said affidavit made by said Jerome Madden as aforesaid, but did not in said application or otherwise ask to have the mineral or non-mineral character of said lands, or any thereof, determined before issuance of the patent which it sought in said *ex parte* application, and that thereafter, and on, to wit, the 14th day of May, 1892, the Register and Receiver of said Local Land Office did certify that they had examined said list of lands and tested the accuracy thereof by the plats and records of their office; that they found the same to be correct; that the filing of said list of lands was allowed and approved; that the whole of said lands were surveyed public lands of the United [62] States and within the limits of twenty miles on each side of the line of said road, and that the same were not nor was any part thereof returned and denominated as mineral lands nor claimed as swamp lands, and that there was not any homestead pre-emption, State or other valid claim to any portion of said lands on file or or record in said Local Land Office.

XIV.

Your orators further say and show that thereafter, and prior to, to wit, the 27th day of June, 1894, the officers of the General Land Office examined said list

of lands in connection *i* with the records and plats of that office, upon said *ex parte* application, and found, among other things, that said lands fell within the twenty mile lateral limits of said road, and that they were, so far as the records of the General Land Office shows, "free from conflict"; but your orator alleges and shows that the officers and agents of the Interior Department had not theretofore had, for the examination of said lands, sufficient opportunity to determine whether any or all of them were or were not mineral lands, or to justify a statement by them in the patent of the United States that said lands were nonmineral, and that neither the officers of the Local Land Office at Visalia, nor the officers of the General Land Office, ever found or determined that any of said lands were nonmineral in character, or attempted to decide or did decide whether any of said lands were or were not mineral lands. And thereupon the then Commissioner of the General Land Office did, in conformity with the rulings and decisions of the interior Department which were then in full force and effect, and which had obtained and been followed by the officers of that Department in such cases for many years, to wit, forty years, recommend to the then Secretary of the Interior as follows, to wit: [63]

"It is hereby recommended that the tracts described," (in said list) "covering 440,900.85 acres, be approved and carried into patent as the lands falling within the grant by the act aforesaid to the said Southern Pacific Railroad Company of California, excluding, however,

from the approval and from the transfer in the patent that may be issued, 'All Mineral Lands', should any such be found in the tracts aforesaid; but this exclusion according to the terms of the statute 'shall not be construed to include coal and iron.'

G. W. LAMOREAUX,
Commissioner."

And your *orator* allege and show that said recommendation of said Commissioner of the General Land Office was thereupon approved by the then Secretary of the Interior, in words and figures as follows, endorsed upon said recommendation, to wit:

"Approved: covering four hundred and forty thousand, nine hundred, and eighty-five hundredths of an acre.

HOKE SMITH,
Secretary."

And your *orator* allege and show that there was no other further finding, determination, certification or recommendation made by any officer of the Interior Department at any time as to the character of any of the lands embraced in said list, and which were afterwards included in the alleged patent hereinafter mentioned, as to their being or not being mineral lands.

XV.

Your *orator* further say and show that thereafter and in pursuance of and in conformity with the said recommendation of the Commissioner of the General Land Office and said approval thereof by the said Secretary of the Interior, the officers of the In-

terior Department who were charged by law with the duty of preparing [64] and issuing patents to lands due to be issued by the United States, did, on, to wit, the 10th day of July, 1894, prepare, execute, issue and deliver to the said defendant, Southern Pacific Railroad Company, a certain alleged patent, a true copy of which, excepting only the descriptions of other lands not involved in this suit, is hereto attached, marked "Exhibit A," and made a part of this Bill of Complaint, wherein was set forth all of said list of lands listed by said the Southern Pacific Railroad Company for patent under said grant upon its said *ex parte* application, and that immediately following said list of lands in said patent is the entire granting clause of said alleged patent, which is in words and figures as follows, to wit:

"NOW KNOW YE, That the United States of America, in consideration of the premises and pursuant to the acts of Congress, have given and granted, and by these presents do give and grant unto the Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of *of* land selected as aforesaid, and described in the foregoing.

Yet excluding and excepting 'All Mineral Lands,' should any such be found in the tracts aforesaid: but this exclusion and exception according to the terms of the statute shall not be construed to include 'coal and iron lands.'

TO HAVE AND TO HOLD the same, with the appurtenances, unto the said Southern Pa-

80 *J. I. Lamprecht and F. M. Aiken, Trustees,*
cific Railroad Company, and to its successors
and assigns forever."

XVI.

Your orators further say and show to the Court that at no time during the pendency of said *ex parte* application for patent of said lands, was any notice, constructive or actual, given [65] to any of the locators of said prior mining locations, of the application of the said Southern Pacific Railroad Company for patent to said lands, nor was there any publication of such notices, nor was there any hearing ordered or had in the Interior Department, or in any branch thereof, for the purpose of allowing any persons having mining claims or other claims on any of said lands, to be heard and have their rights in or to any of said lands examined or determined, and said list of lands was certified as aforesaid, without opportunity being given to any of said prior mining locators of any of said lands to be heard in defense of their rights to any of said lands under said mining locations, and the officers of the Land Department never acquired jurisdiction to conceal, and never did conceal, said mining locations, and never acquired jurisdiction otherwise to defeat or in any wise affect any rights of the locators thereof thereunder, and never attempted or presumed to or did molest or interfere in any way whatsoever with such rights.

XVII.

Your *orator* further say and show unto the Court that the said Southern Pacific Railroad Company, with full knowledge of all the facts and circum-

stances herein stated and alleged, did for itself, its successors and assigns forever, accept and assent to and submit to and agree to be bound by each and all of the provisions, stipulations, terms, conditions, restrictions, limitations, exclusions and reservations in said Act and joint resolution, and said patent, or either or any of them, contained, and so accepting the same and assenting and submitting thereto and agreeing to be bound thereby, did receive and accept said alleged patent and cause the same to be recorded in the office of the Recorder of the County of Fresno and State of California, and that said defendant, Southern Pacific Railroad Company, and all persons claiming any interest in said lands, or [66] any part thereof, under or through it by virtue of said Act of Congress and joint resolution and said patent, or either of them, are bound by all of said provisions, stipulations, terms, conditions, restrictions, limitations, exclusions, exceptions and reservations, and are in equity and in conscience estopped to resist or deny the binding force and effect of the same, or any part of any thereof.

XVIII.

Your orators further say and show that the lands described in paragraph III of this Bill of Complaint are not within the limits of twenty miles of any completed section of twenty-five consecutive miles of the line of the railroad of said defendant, Southern Pacific Railroad Company, and are not coterminous with any completed section of twenty-five consecutive miles of the line of the said railroad, and that the railroad to aid in the construction of which said

grant of lands was made, has never been completed, and that all of the lands described in paragraph III of this Bill of Complaint lie opposite to and coterminous with an uncompleted section of twenty-five consecutive miles of said railroad line, and that prior to the certification of said list of lands and the issuance of said alleged patent as aforesaid, the said Southern Pacific Railroad Company had received from the United States, for the construction of its said railroad, land to the amount of more than ten alternate odd-numbered sections per mile for all the railroad it has ever constructed under its grant, and that said alleged patent was illegally issued, and was issued without any jurisdiction on the part of any officer of the United States, or any Department thereof, to issue the same, and was issued in violation and in contravention of the provisions of Section 4 of said Act of July 27th, 1866; and your *orator* alleges and avers that said recommendation of said list [67] of lands for patent by the Commissioner of the General Land Office, and said approval thereof by said Secretary of the Interior, and the issuance of said alleged patent, were all wholly without authority of law and in contravention and violation of the 7th Section of the Act of March 3d, 1887, and that said certification and said alleged patent were and ever have been inoperative, void and of no effect.

XIX.

Your orators further allege and show that the lands described in paragraph III of this Bill of Complaint were, on, to wit, the 3d day of March,

1909, vacant, unappropriated public mineral lands belonging to the United States, except for the mining locations theretofore made thereon, as alleged in paragraph IX of this Bill of Complaint, and that on, to wit, the 3d day of March, 1909, no annual assessment work for the year of 1908 had been done or commenced on any of said prior mining claims, and said lands were open to relocation as placer mining grounds, and that on, to wit, the 3d day of March, 1909, this complainant, and A. L. Frick, N. J. Frick, S. L. Phillips, E. Phillips, M. E. Wall, B. McGowan and E. M. Dunweadie, acting as an association of eight persons, entered on said lands and relocated each quarter section thereof as placer mining ground, under and in accordance with the mining laws of the United States and the rules, regulations and customs of miners in the district where said lands are situated, and posted upon each of said quarter sections so relocated the notice of such relocation required by law to be posted, and did thereafter and on, to wit, the 6th day of March, 1909, cause copies of each of said relocation notices to be duly recorded in the office of the Recorder for the county of Fresno, State of California, which was then the proper and lawful place for the recordation of mining locations made within said county where said lands are situated, and did thereby succeed to [68] all the right, title and interest of said prior mining locators in and to all of said lands and to the discoveries on which said prior mining locations were predicated.

XX.

That contemporaneous with the making of said relocations there was a discovery of mineral by said relocators on each quarter section or one hundred and sixty acre tract of said land, and prior thereto said land had been properly and legally examined by the Department of the Interior and designated by it as lands bearing mineral in commercial quantities and more valuable for mining purposes than for any other purpose.

XXI.

Your orators further say and show that said defendant, Southern Pacific Railroad Company, had never, prior to the beginning of this suit, been in actual, open, notorious, exclusive, continuous and hostile possession of any of said lands described in paragraph III of this Bill of Complaint.

XXII.

Your orators further allege that, subject only to the paramount title of the United States, *he* is the owner and entitled to the possession of all the lands described in paragraph III hereof, as placer mining claims under the mining laws of the United States, to the extent of one-tenth (1/10) undivided interest in the whole thereof; and that your orator is informed and believes, and upon such information and belief alleges, that J. I. Lamprecht and F. M. Aiken, Trustees, are the owners in trust for the benefit of a large number of persons, firms and corporations, other than the said defendants, the Southern Pacific Railroad Company and The Kern Trading and Oil Company, and are entitled to the possession of all of

said lands described in paragraph III hereof, to the extent of an undivided nine-tenths (9/10) thereof, as placer mining claims, subject only to the paramount title of the [69] United States.

XXIII.

Your orators further allege and show that said alleged patent constitutes a cloud upon the said title of your orator in and to said lands, and that the reasonable and market value of each of said mining claims is upwards of Sixty Thousand Dollars (\$60,000.00), and that the reasonable and market value of your orator's said undivided interest in each of said mining claims is upwards of One Million Five Hundred Thousand Dollars.

XXIV.

Your orators further allege and show that the said defendants other than said J. I. Lamprecht and F. M. Aiken, Trustees, claim to have some right, title or interest in or to said premises described in paragraph III hereof, or to some portion thereof, adverse to these answering defendants, but all such claims are illegal and invalid, and they have not, either jointly or severally, any right, title or interest in or to the same, or any part thereof, or in or to any part of the said mining claims now subsisting thereon,

WHEREFORE, your orators prays:

1st: That a construction and an interpretation be made by this Court in this suit of Section 3, 4, 6 and 18, of said Act of Congress approved July 27th, 1866, and of the joint resolution of Congress approved June 28th, 1870, and all the other Acts of Congress

mentioned in the Bill of Complaint, in relation to their application to the facts and circumstances stated and alleged in this Bill of Complaint.

2d: That a construction and interpretation be made by this Court in this suit of the recommendation of the Commissioner of the General Land Office for the certification and approval by the Secretary of the Interior of the said list of lands, and of the approval by the Secretary of the Interior of said recommendation [70] as set forth and alleged in the Bill of Complaint, and also of said patent, including the claims in said alleged patent excepting and excluding all mineral lands from conveyance by said alleged patent.

3d: That all of said defendants be required to set forth the nature of their respective claims in and to the property described in paragraph III of the Bill of Complaint, and that all claims of said defendants and of the complainant in or to said lands and said mining claims adverse to your orators may finally be determined by decree of this Court in this suit.

4th: That it may be ordered, adjudged and decreed by this Court in this suit that none of said defendants, except J. I. Lamprecht and F. M. Aiken, Trustees as aforesaid, have any right, title or interest in or to said lands described in paragraph III of this Bill of Complaint, or in any part thereof, or in or to said mining claims, or any thereof, and that they and each and all of them are, and that they be estopped from claiming any right, title or interest in or to the same, and that these answering defendants' title to said lands be quieted.

5th: That an interlocutory injunction in due form be issued by this Court, directed to each and all of the defendants herein, except the said defendants J. I. Lamprecht and F. M. Aiken, Trustees as aforesaid, commending them, and each of them, and all other persons in privity with them, to refrain and desist from any interference with the property described in paragraph III of this Bill of Complaint, or the minerals therein, and from interfering with complainant's or these answering defendants' possession thereof, until the final determination of this suit, and that upon final hearing therein said injunction may be made perpetual.

6th: That your orators may have such other, further and [71] different relief, order or decree, the premises being considered, as to the Court may seem just and equitable.

INGALL W. BULL,

Business Address: 616-617 Central Bldg., Los Angeles, California.

Of Counsel.

State of California,
County of Los Angeles,—ss.

Ingall W. Bull, being duly sworn, deposes and says that he is the atty. for the defts. above named; that he has read the foregoing Bill, and knows the contents thereof; that the same is true, of his own knowledge, except as to the matters therein alleged on information and belief, and as to those matters, he believes them to be true; that said J. I. Lamprecht

88 *J. I. Lamprecht and F. M. Aiken, Trustees,*
and F. M. Aiken are nonresidents of and are absent
from Los Angeles County, California.

INGALL W. BULL.

Subscribed and sworn to before me, this 1st day of
November, 1910.

CORA E. MONTGOMERY. [Seal]

Notary Public, Los Angeles County, State of Cali-
fornia. [72]

Exhibit "A."

PATENT.

TO ALL TO WHOM THESE PRESENTS
SHALL COME, GREETINGS:

WHEREAS by the Act of Congress approved
July 27, 1866, and Joint Resolution of June 28, 1870,
"to aid in the construction of a Railroad and Tele-
graph Line from the States of Missouri and Arkansas
to the Pacific Coast" and to secure to the Govern-
ment the use of the same for postal, Military and
other purposes, *w*uthority is given to the Southern
Pacific Railroad Company of California, a corpora-
tion existing under the laws of the State, to construct
a Railroad and Telegraph Line, under certain con-
ditions and stipulations expressed in said Act, from
the City of San Francisco to a point of connection
with the Atlantic and Pacific Railroad near the
boundary line of said State, and provision is made
for granting to the said Company, "every slternate
section of public land designated by odd numbers, to
the amount of twenty alternate sections per mile on
each side of said Railroad, on the line thereof, and
within the limits of twenty miles on each side of said
road" "not sold, reserved, or otherwise disposed of

by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed.”

AND WHEREAS, Official statements from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him, that the line of said railroad and telegraph from San Jose to *Tre Pimos* and from *Alcalde* to *Mojave*, together comprising Two Hundred and Fifty Two miles and four hundred and seventy-nine thousandths of a mile has been constructed and fully completed and equipped in the manner prescribed by said Act of July [73] 27, 1866, and accepted by the President.

AND WHEREAS the following tracts have been duly listed under the Act aforesaid by the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original lists of selections approved by the local officers and on file in this office.

AND WHEREAS the said tracts of land lie co-terminous to the constructed line of said road and are particularly described as follows, to wit:

South of base line and East of Mt. Diablo Meridian,
State of California.

Township Nineteen, Range fifteen.

All of Section 33, containing 640 acres.

(With other land.)

The said tracts as described in the foregoing make the aggregate area of 440,900.85 acres.

NOW, KNOW YE, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, Have Given and Granted and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing. Yet excluding and excepting "All Mineral Lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, shall be constructed to include "Coal and Iron Lands."

TO HAVE AND TO HOLD the same with the appurtenances unto the said "Southern Pacific Railroad Company" and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I GROVER CLEVELAND, President of the United States, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed.
[74]

Given under my hand at the City of Washington, this the Tenth day of July, in the year of our Lord One Thousand eight hundred and ninety four and the Independence of the United States, the one hundred and nineteenth.

By the President: GROVER CLEVELAND.

[Seal]

M. McKEAN,

Secretary.

L. Q. LAMAR,

Recorder of the General Land Office.

Recorded in Vol. 14, pp. 103 to 142, inclusive.

Patent No. 22.

Recorded Feb. 16, 1895, at 8:27 o'clock A. M. in Vol. P. of Patents, page 283 et seq., Fresno County Records.

[Endorsed]: No. 192. In the Circuit Court of the United States for the Southern District of California, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific Railroad Company et al., Defendants. Answer of I. J. Lamprecht and F. M. Aiken to Amended Bill. Filed Nov. 1, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. D. J. Hinkley, Solicitor for Cross-complainants, #1008 Wright & Callendar Building, Los Angeles, California. [75]

Case No. 192.

United States Circuit Court, Ninth Circuit, for the Southern District of California, Northern Division.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
KERN TRADING & OIL COMPANY et al.,
Defendants.

Stipulation [for Filing Amended Bill of Complaint].

It is hereby stipulated that the above-named complainant may file and serve an amended bill of complaint in the above-entitled action, and that the demurrer of the defendants Southern Pacific Railroad Company and Kern Trading and Oil Company now

on file in the said action may stand as their demurrer to said amended bill when filed and served, and that the said defendants may file any further or amended demurrer or motion running to the said amended bill that they may consider advisable, all or any of which may be heard on the 21st day of November, 1910.

EDMUND BURKE,

In Pro. Per.

WM. SINGER, Jr.,

D. V. COWDEN and

GUY V. SHOUP,

Attorneys for Southern Pacific Railroad Co. and
Kern Trading and Oil Co.

[Endorsed]: No. 192. U. S. Circuit Court, Southern District of California, Northern Division. Edmund Burke vs. Southern Pacific Railroad Co. et al. Stipulation. Filed Nov. 2, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Guy V. Shoup and D. V. Cowden, *Attorney* for Defendants. Room 842, Flood Building, San Francisco. [76]

*In the Circuit Court of the United States of America,
in and for the Southern District of California,
Northern Division.*

No. 192.

EDMUND BURKE,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-
PANY, THE KERN TRADING AND OIL
COMPANY, T. S. MINOT, JNO. I. LAM-
PRECHT and F. M. AIKEN, as Trustees,
et al.

Demurrer to Cross-Bill.

The demurrer of T. S. Minot, defendant herein, to
the Cross-Bill of Jno. I. Lamprecht and F. M. Aiken
the above-named defendant, shows:

That this defendant, T. S. Minot, by protesta-
tion, not confessing or acknowledging all, or any of
the matters or things in said Cross-Bill contained to
be true, in such a matter and form as the same are
therein set forth and alleged, demurs to the said
Cross-Bill of John I. Lamprecht and F. M. Aiken,
and for causes of demurrer shows:

1st. That the said defendants *hath* not in and by
said Cross-Bill named or stated such a cause as doth
or ought to entitle them to any such discovery or re-
lief as is thereby sought and prayed for from or
against this particular defendant or any relief what-
soever.

2nd. That the said Cross-Bill is exhibited against

this particular defendant and plaintiff and against a large number of other defendants named in said Bill for several and distinct and independent matters and causes which have no relation to each other and in which, or in a greater part of which this particular defendant is in no way interested or concerned, [77] and ought not to be implicated, thereby constituting a misjoinder of causes of suit.

3rd. That said Cross-Bill shows upon its face that defendants Jno. I. Lamprecht and F. M. Aiken have no right to or interest or estate in the land involved in this suit, either legal or equitable, or as trustees, which can be enforced by said defendants in this proceeding.

4th. That the said Cross-Bill is deficient in certainty and duplicitous in this:

(a) That it fails to show whether or not said cross-suit is instituted to forfeit a portion of the Southern Pacific Railroad Company's Land Grant, between Goshen Junction and Alcalde; (b) Or to vacate or annul a patent; (c) Or to set aside a fraudulent conveyance; (d) Or for partition; (e) Or to quiet title; (f) Or remove a cloud on title; (g) Or to enforce specific performance; (h) Or to enforce a trust; (i) Or to control the operation of a patent.

4½. Said Cross-Bill of Complaint also fails to show in what way this particular defendant is connected directly or indirectly, with the Southern Pacific Railroad Company, and the Kern Trading and Oil Company, and the defendants Jno. I. Lamprecht and F. M. Aiken, and other defendants, and constitutes and is a misjoinder of parties plaintiff

and defendant in this: Said Cross-Bill fails to show upon the face thereof, or otherwise, directly or by implication, any connection or privity of interest between T. S. Minot and defendants Jno. I. Lamprecht and F. M. Aiken, as trustees or otherwise, or what interest John Doe et al., have in common with plaintiff or defendants or otherwise, in the premises in dispute.

5th. That there is a nonjoinder of parties plaintiff, in this: Said Cross-Bill fails to show who Jno. I. Lamprecht and F. M. Aiken, trustees, are, and why they are not made parties [78] plaintiff in plaintiff's original bill as they should be instead of parties defendant, and fails to plead the reason or excuse for making said parties defendant, and fails to state or show the motive, cause or excuse for making said parties defendants in the original bill instead of plaintiffs, thereby creating by said disconnected equivocal and disjointed allegations an imperfect, improper and unintelligible Cross-Bill contrary to the Rule.

5½. Said supposititious Cross-Bill seeks no discovery and sets up no defense which might not as well have been taken by answer and is only a repetition of the original bill of complaint.

6th. That said Cross-Bill fails to show that Edmund Burke or Jno. I. Lamprecht and F. M. Aiken, as trustees, or otherwise, have or possess any authority from the United States of America, or the Attorney General of the United States of America, to institute proceedings to forfeit the land grant of the defendant the Southern Pacific Railroad Company

between Alcalde and Goshen Junction, and fails to show how this particular defendant is or could be implicated with or interested in any proceeding to forfeit said lands.

7th. That said Cross-Bill is deficient, uncertain, ambiguous and unintelligible in this: that said Bill fails to definitely and specifically point out and exhibit the fraud practiced upon the Department of the Interior of the United States of America by the Southern Pacific Railroad Company or how it was committed.

8th-a. That said Cross-Bill is ambiguous for the same causes and reasons set forth in paragraph 4, and for the further reason that its allegations are repugnant to and neutralize each other, and are self-destructive and paradoxical.

8th-b. That said Cross-Bill is unintelligible for the same causes and reasons set forth in paragraph 4, and for the [79] further reason that it cannot be understood therefrom who Jno. I. Lamprecht and F. M. Aiken, as trustees, are; what interest they have in the subject matter of this suit; why they are joined as parties in the original bill; why they are made defendants in the original bill; why they are not made plaintiffs in the original bill; what is the nature and extent of their trust; what they are trustees of; for whom they are trustees; whether they are trustees of an express, constructive or resulting trust.

8th-c. That said Cross-Bill is multifarious for each and all the reasons set forth in paragraph 4, 8-a, 8-b, and 2, to which reference is hereby specifically made, and the same are made a part of this

objection and ground of demurrer to said Cross-Bill.

8th-d. That said Cross-Bill does not state the facts constituting the several causes of suit in separate counts, or causes of suit, separately numbered, as by the code, or good pleading required, so as to advise the Court and the opposite party of the pleaders' intention, thereby making said Cross-Bill ambiguous, uncertain and unintelligible.

9th. That said Cross-Bill is deficient and uncertain in this, that it fails to state or give the addresses and residences of the defendants, and the Court cannot understand therefrom whether said parties are fictitious or not, or locate the same for costs; or for any purpose or purposes connected with this litigation, or to enforce the orders of this Court, and is contrary to the rule.

10th. That said nondescript Cross-Bill does not show specifically any privity of interest between the complainant herein and these particular defendants.

11th. This defendant further demurring to said Cross-Bill shows unto your Honors that the said defendants have not [80] made or stated and doth not make and state in said Cross-Bill such a cause of suit as doth entitle them in a court of equity to the cross relief prayed for, or any part thereof, or to any relief whatsoever.

12th. The defendant further demurs to each, every and all paragraphs of defendant's Cross-Bill for that they only state conclusions of law.

WHEREFORE this particular defendant, for himself, for divers other good causes of demurrer appearing in the said Cross-Bill, further demurs

98 *J. I. Lamprecht and F. M. Aiken, Trustees,*
thereto, and he prays judgment of this Honorable
Court whether he shall be compelled to make any
other or further answer to said Cross-Bill, or any
of the matters and things therein contained. And
this particular defendant prays to be hence dis-
missed with his reasonable costs in his behalf sus-
tained, and further prays that said Cross-Bill be
wholly dismissed, or stricken from the files, and for
general relief.

T. S. MINOT,
In Pro. Per.

State of California,
City and County of San Francisco,—ss.

I, T. S. Minot, being first duly sworn, depose and
say: That I am an Attorney at Law and Solicitor
in Chancery, and duly admitted to practice in this
court; that I am one of the defendants set forth and
mentioned in the above demurrer, and in the Cross-
Bill of defendants Jno. I. Lamprecht and F. M.
Aiken and in the first amended Bill of Complaint of
Edmund Burke on file in this court, and the above-
entitled suit; said suit being numbered 192, and that
I appear in pro per, and I further say that the fore-
going demurrer to the Cross-Bill, exhibited in this
suit, is not interposed for delay, but in good faith.

T. S. MINOT. [81]

Subscribed and sworn to before me this 9 day of
November, 1910.

[Seal]

W. L. MYERS,
Notary Public in and for Los Angeles Co., State of
California.

My Commission expires 2/1, 1914.

Southern District of California,
Northern Division,—ss.

I, T. S. Minot, one of the defendants herein mentioned, on my own behalf, hereby certify that I am an attorney at law, and a Solicitor in Chancery, and duly admitted to practice in this Court, and that in my opinion the foregoing demurrer is well founded in law.

T. S. MINOT.

[Endorsed]: No. 192. United States Circuit Court, Southern District of California, Northern Division. Edmund Burke, Plaintiff, vs. Southern Pacific Railroad Co. et al., Defendants. Demurrer to Cross-Bill of Jno. I. Lamprecht and F. M. Aiken. Received Copy of Within Demurrer to Cross-Bill of J. I. Lamprecht & Aiken this 9th day of November, 1910. Ingall W. Bull, Attorney for Lamprecht & Aiken. Filed Nov. 10, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. T. S. Minot, in Pro Per., 1003 Phelan Bld., San Francisco, Calif., Angelus Hotel, Los Angeles, Cal. [82]

**[Joint and Several Demurrer to Cross-Bill of
Complaint.]**

*United States Circuit Court, Ninth Circuit, Northern
Division of the Southern District of Cali-
fornia.*

. IN EQUITY—Case No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendants.

The Joint and Several Demurrer of the defendants Southern Pacific Railroad Company and Kern Trading and Oil Company, to the Cross-Bill of Complaint of John I. Lamprecht and T. M. Aiken herein.

These defendants, Southern Pacific Railroad Company and Kern Trading and Oil Company, jointly and severally, by protestation, not confessing or acknowledging all or any of the matters or things in the said Cross-Bill of Complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto and to the whole thereof and for cause of demurrer show:

1st. That the said Cross-Bill of Complaint does not state a cause of action, or cause of suit, against these defendants, or any of them, within the jurisdiction of this Court.

2nd. That the said Cross-Bill of Complaint does

not set forth or show any matter, equity, or cause, entitling cross-complainants, or any of them, to file or maintain the same against these defendants, or any of them.

3rd. That the said Cross-Bill of Complaint does not set forth or show any matter, equity, or cause, entitling cross-complainants, [83] or any of them, to the discovery thereby sought, required, or prayed, or to any discovery whatsoever, of or from these defendants, or any of them.

4th. That the said Cross-Bill of Complaint does not set forth or show any matter, equity, or cause, entitling cross-complainants, or any of them, to the relief thereby sought or prayed, or to any relief whatsoever, of or from these defendants, or any of them.

5th. That it appears by the allegations of the said Cross-Bill of Complaint that any cause of action, or cause of suit, shown or sought to be shown thereby, is barred by the first section of the Act of Congress, approved March 2d, 1396, entitled "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents, and for other purposes," printed and published in Volume 29, on pages 42 and following, United States Statutes at Large.

6th. That it appears by the allegations of the said Cross-Bill of Complaint that any cause of action, or cause of suit, shown or sought to be shown by the said Cross-Bill of Complaint is barred by:

(a). The provisions of section 318 of the Code of Civil Procedure of the State of California.

(b). The Provisions of section 319 of the Code of Civil Procedure of the State of California.

(c). The provisions of section 320 of the Code of Civil Procedure of the State of California.

(d). The provisions of section 321 of the Code of Civil Procedure of the State of California.

(e). The provisions of section 338 of the Code of Civil Procedure of the State of California.

(f). The provisions of section 343 of the Code of Civil Procedure of the State of California.

[84]

7th. That it appears by the allegations of the said Cross-Bill of Complaint that any cause of action, or cause of suit, shown or sought to be shown by the said Cross-Bill of Complaint, is barred by the long delay and laches of the cross-complainants, and of each of them.

Wherefore, these defendants, jointly and severally, pray the judgment of this Honorable Court whether they, or any of them, shall make any further or other answer to the said Cross-Bill of Complaint, or to any part thereof, or to any matters or things therein set forth; and further pray to be hence dismissed, with their costs in this behalf sustained.

GUY V. SHOUP and

D. V. COWDEN,

Attorneys for the said Defendants.

WM. SINGER, Jr.,

Counsel for the said Defendants.

State of California,

City and County of San Francisco,—ss.

G. L. King makes solemn oath and says: That he

is the Secretary of the Southern Pacific Railroad Company, named as one of the defendants in and to the foregoing Joint and Several Demurrer; and that the said Demurrer is not interposed for delay.

G. L. KING.

Subscribed and sworn to before me on November 9th, 1910.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

I hereby certify that, in my opinion, the foregoing Joint and Several Demurrer is well taken in point of law.

WM. SINGER, Jr.,

Counsel for the said Defendants. [85]

[Endorsed]: No. 192. U. S. Circuit Court, Southern District of California, Northern Division. Edmund Burke vs. Southern Pacific Railroad Co. et al. Joint and Several Demurrer of S. P. R. R. Co. and Kern Trading & Oil Co. to Cross-Bill of Lamprecht et al. Filed Nov. 11, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Guy v. Shoup and D. V. Cowden, *Attorney* for Defendants, Room 842, Flood Building, San Francisco. [86]

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit,
Southern District of California, Northern Di-
vision.*

No. 192.

Clerk's Office.

EDMUND BURKE,

Compl't,

vs.

SOUTHERN PACIFIC RAILROAD CO.,

Deft.,

and

J. I. LAMPRECHT et al., Trustees,

Cross-Complts.,

vs.

SOUTHERN PACIFIC RAILROAD CO. et al.,

Defendants.

Praeceptum [for Appearance].

To the Clerk of said Court:

Sir: Please enter my appearance as Solicitor of Record for the Cross-complainants J. I. Lamprecht and F. M. Aiken, Trustees.

DELBERT J. HINKLEY,

1008 Wright & Callender Bldg., Los Angeles, Cal.

Dated Dec. 27, 1910.

[Endorsed]: No. 192. U. S. Circuit Court, Ninth Circuit, Southern District of California, Northern Division. Burke vs. S. P. R. R. Co. et al. Praeceptum for Appearance. Filed Dec. 27, 1910. Wm. M. Van

vs. The Southern Pacific Railroad Co. et al. 105

Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.
[87]

[Appearance of J. I. Lamprecht and F. M. Aiken by
D. J. Hinkley.]

*In the Circuit Court of the United States, of the
Ninth Judicial Circuit, in and for the Southern
District of California, Northern Division.*

No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD CO. et al.,
Defendants.

Pursuant to the written request of Delbert J. Hinkley, Esq., the appearance of the cross-complainants, J. I. Lamprecht and F. M. Aiken, Trustees, and of Delbert J. Hinkley, Esq., their solicitor, is hereby duly entered in the above-entitled cause, this 27th day of December, 1910.

WM. M. VAN DYKE,
Clerk.

By Chas. N. Williams,
Deputy Clerk.

Filed and entered December 27th, 1910.

WM. M. VAN DYKE,
Clerk.

By Chas. N. Williams,
Deputy Clerk. [88]

*In the Circuit Court of the United States, for the
Southern District of California, Northern Di-
vision.*

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendants,

and

J. I. LAMPRECHT et al.,

Cross-complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Cross-defendants.

**Stipulation [as to Filing Amended Cross-Bill and
Demurrer Thereto.]**

It is hereby stipulated and agreed by and between J. I. Lamprecht and F. M. Aiken, cross-complainants in this cause, and Southern Pacific Railroad Company and The Kern Trading and Oil Company, cross-defendants in said cause, by their respective solicitors, that said cross-complainants may file and serve in said cause an amended cross-complaint, and that the demurrer of said cross-defendants to the original cross-complaint may stand as their demurrer to such amended cross-complaint the same as if

it had been filed as the original cross-complaint.

Dated Dec. 30th, 1910.

WM. SINGER, Jr.,
GUY V. SHOUP and
D. V. COWDEN,

Solicitors for Cross-defendants.

D. J. HINKLEY,

Solicitor for Cross-complainants. [89]

[Endorsed]: No. 192. U. S. Circuit Court, Southern District of California, Northern Division. Edmund Burke vs. Southern Pacific Company et al. Stipulation. Filed Jan. 9, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [90]

[Cross-Bill of Complaint of J. I. Lamprecht and F. M. Aiken, Trustees.]

*In the Circuit Court of the United States in and for
the Southern District of California, Northern
Division.*

IN EQUITY—Number 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
The Kern Trading and Oil Company, Thomas
W. Newlin, W. H. Layson, N. W. Spaulding,
F. D. Culver, C. F. Bassett, Henry C. Bunker,
Mary Ann Haddon, A. R. Cotton, Daniel E.
Rayes, E. M. Root, Jarvis L. Doyle, E. N.
Richardson, Hattie E. Miner, Helen Pollock,

George A. Doyle, B. Block, Loretta B. Hart, Annie M. Bassett, Merrill D. Evans, William Miner, J. V. Ellis, Mary A. Hedden, Leonora J. Evans, Oregon Sanders, James Hedden, E. M. Redding, J. R. Manran, William Pollock, Joseph Hart, E. S. Payne, Mary J. Hilda, Albert Betz, A. L. Frick, M. J. Frick, S. L. Phillips, E. Phillips, M. E. Wall, E. M. Dunweedie, Barclay McGowan, John Doe, Richard Roe, Thomas Green, Henry Doe, James Doe, Edward Roe, Peter Doe, Dolly Doe, Frank Doe, Joseph Doe, Jacob Doe, Isaac Doe, Katy Doe, Harry Doe, Davis Doe, Duke Doe, Minnie Doe, Bunny Doe, Jerry Doe, McGowan Doe, Grant Doe, Platt Roe, George Morton, Jno. I. Lamprecht, and F. M. Aiken, as Trustees, George D. Roberts, Q. L. Phelps, James Meynard, Jr., A. M. Anderson, T. S. Minot, Newton A. Johnson, David Ewing, [91] D. M. Speed, Wm. Johnson, S. J. Gallagher, O. D. Loftus, Willis George Emerson, W. W. Ayres, H. E. Ayres, W. J. Thomas, D. J. Hinkley, Charles James, Chulk Roberts, Robert Rendall, Henry C. Kerr, George Engle, James Ward, J. L. D. Walp, T. J. Turner, Fred E. Windsor, M. J. Corey, P. W. Cypher, G. W. Wainer, Choud Burnes, W. H. Truzer, David Ishman, Ash Seince, Frank Provost, Samuel Murshback, H. R. Crozier, J. M. Robertson, P. C. Tuyler, Henry Greenleaf, R. M. Cook, I. W. Alexander, J. W. Swartzhammer, Henry Bamada, E. M.

Ayres, John W. Burdelle, Walter Baun and
E. M. Scott,

Defendants,

and

JOHN I. LAMPRECHT and F. M. AIKEN, Trus-
tees,

Cross-complainants,

vs.

EDMUND BURKE, SOUTHERN PACIFIC
RAILROAD COMPANY, The Kern Trading
and Oil Company, Thomas W. Nowlin, W.
H. Layson, N. W. Spaulding, F. D. Culver,
C. F. Bassett, Henry C. Bunker, Mary Ann
Haddon, A. R. Cotton, Daniel E. Rayes, E. M.
Root, Jarvis L. Doyle, E. N. Richardson,
Hattie E. Miner, Helen Pollock, George A.
Doyle, B. Block, Loretta B. Hart, Annie M.
Bassett, Merrill D. Evans, William Miner,
J. V. Ellis, Mary A. Hedden, Leonora J.
Evans, Oregon Sanders, James Hedden, E. M.
Redding, J. R. Manran, William Pollock,
Joseph Hart, E. S. Payne, [92] Mary J.
Hilda, Albert Betz, A. L. Frick, M. J. Frick,
S. L. Phillips, E. Phillips, M. E. Wall, E. M.
Dunweedie, Barclay McGowan, John Doe,
Richard Roe, Thomas Green, Henry Doe,
James Doe, Edward Roe, Peter Doe, Dolly
Doe, Frank Doe, Joseph Doe, Jacob Doe,
Isaac Doe, Katy Doe, Harry Doe, Davis Doe,
Duke Doe, Minnie Doe, Bunny Doe, Jerry
Doe, McGowan Doe, Grant Doe, Platt Roe,
George Morton, George D. Roberts, Q. L.

Phelps, James Meynard, Jr., A. M. Anderson, T. S. Minot, Newton A. Johnson, David Ewing, D. M. Speed, Wm. Johnson, S. J. Gallagher, O. D. Loftus, Willis George Emerson, W. W. Ayres, H. E. Ayres, W. J. Thomas, D. J. Hinkley, Charles James, Chulk Roberts, Robert Rendall, Henry C. Kerr, George Engle, James Ward, J. L. D. Walp, T. J. Turner, Fred E. Windsor, M. J. Corey, P. W. Cypher, G. W. Wainer, Choud Burnes, W. H. Truzer, David Ishman, Ash Seince, Frank Provost, Samuel Murshback, H. R. Crozier, J. M. Robertson, P. C. Tuyler, Henry Greenleaf, R. M. Cook, I. W. Alexander, J. W. Swartzhammer, Henry Bamada, E. M. Ayres, John W. Burdelle, Walter Baun and E. M. Scott,

Cross-defendants.

To the Judge of the Circuit Court of the United States for the Southern District of California.

[93]

John I. Lamprecht and F. M. Aiken, Trustees, bring this their Cross-Bill of Complaint against the above cross-defendants, and thereupon respectfully show unto the Court:

I.

That at all of the times hereinafter mentioned, the defendant, Southern Pacific Railroad Company, has been and is now a corporation created and existing pursuant to the laws of the State of California, having its principal office at the city of San Francisco, in the State of California.

II.

That the Kern Trading and Oil Company, for the last five (5) years, has been and is now a corporation created and existing pursuant to the laws of the State of California, having its principal office at the city of San Francisco, in the State of California, and during all of said time has been and now is wholly owned, dominated, controlled and operated by the said Southern Pacific Railroad Company, for the ulterior purpose of doing certain things which the said Southern Pacific Railroad Company is prohibited by law from doing, to wit, mining for petroleum and other minerals, and buying, selling and dealing in the same as a commodity, and claiming, for the benefit of the Southern Pacific Company, as its alleged lessee, the mineral lands hereinafter described, all of which is to the prejudice and damage of these cross-complaints, as hereinafter appear and are set forth.

III.

That the following described lands, to wit:

All of Section 11, 13, 23 and 33, Township 19 South, Range 15 East, Mount Diablo Base and Meridian, and all of Section 5, Township 20 South, Range 15 East, Mount Diablo Base and Meridian, all situated in Fresno County, California: [94]

are and have been since, to wit, the 1st day of January, 1865, known to be mineral lands of great value, containing mineral in paying quantities and more valuable for mining purposes than for any other purposes; all of which has been known to the Southern

Pacific Company, its officers and agents, since, to wit, the 1st day of January, 1865, and to the defendant, The Kern Trading and Oil Company, its officers and agents, since the date of its creation.

IV.

That heretofore the Congress of the United States passed a certain Act, which was approved by the President of the United States, July 27th, 1866, making a grant of public lands of the United States to the defendant, Southern Pacific Railroad Company, and that Section 3 of said Act of Congress, is in the words and figures as follows, to wit:

“Sec. 3. AND BE IT FURTHER ENACTED, That there be, and hereby is, granted to the Atlantic Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said Company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free [95] from pre-emption or

other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: PROVIDED, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: PROVIDED FURTHER, That the railroad company receiving the previous grant of land may assign their interest to said 'Atlantic and Pacific Railroad Company,' or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: PROVIDED FURTHER, That all mineral lands be, and the same are hereby excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd numbered sections nearest to the line of

said road, and within twenty miles thereof, may be selected as above provided: AND PROVIDED FURTHER, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: AND PROVIDED FURTHER, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railroad.' " [96]

V.

These cross-complainants further say and show that Section 18 of said Act of Congress is in words and figures as follows, to wit:

"Sec. 18. AND BE IT FURTHER ENACTED, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all of the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

VI.

These cross-complainants further say and show

that Section 4 of said Act of Congress is in words and figures as follows, to wit:

“Sec. 4. AND BE IT FURTHER EN-ACTED, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial [97] and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminus with said completed section of said road. And from time to time, when over twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid.”

VII.

These cross-complainants further say and show that Section 6 of said Act is in words and figures as follows, to wit:

“Sec. 6. AND BE IT FURTHER ENACTED: That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad, and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this Act; but the provisions of the Act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled “An act to secure homesteads to actual settlers on the public domain, approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the [98] line of said road when surveyed, excepting those hereby granted to said company.

VIII.

These cross-complainants further say and show that thereafter the Congress of the United States passed a certain joint resolution, which was approved by the President of the United States on the 28th day of June, 1870, which joint resolution is in words and figures as follows, to wit:

“BE IT RESOLVED, etc., That the South-

ern Pacific Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior; he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the Secretary of the Interior that such section of railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminus to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act." [99]

IX.

These cross-complainants further say and show that prior to the 9th day of May, 1892, all of said lands described in paragraph III of this Cross-Bill

were, except for the mining claims hereinafter mentioned, unappropriated public mineral lands of the United States and subject and open to location under the mining laws of the United States, and that, prior to said 9th day of May, divers citizens of the United States, did, pursuant to the mining laws of the United States and the rules, regulations, customs and usages of miners then in force in the mining district in which said lands were situated, enter upon and locate, as placer mining ground, all of the lands described in paragraph III of this Cross-Bill in mining claims of one-quarter section each, after a discovery of mineral made by the locaters thereof on each of said mining claims, and that all of said mining locations remained in full force and effect, uncanceled and unforfeited, from the date of their location as aforesaid, until, to wit, the 3d day of March, 1909, whereby all of said lands became and were and continued to be, during all of said time, segregated from the public domain.

X.

That the Coalinga Mining District included within its boundaries all of the lands described in paragraph III of this Cross-Bill and was organized prior to the 9th day of May, 1892, and that all of said mining locations were duly recorded prior to the 9th day of May, 1892, in the office of the Recorder of said Mining District, which was the proper place for the recording of the same, according to the rules, regulations, customs and usages of the miners of said district; of all of which the said defendants, Southern Pacific Railroad Company and the Kern

Trading and Oil Company, their officers and agents, have at all times since the recording of the same had notice. [100]

XI.

These cross-complainants further say and show, that there was not, at the time of the location of said mining claims as aforesaid, or at the time of the recording of the notice of said locations as aforesaid, nor has there at any time since been, any rule, regulation, custom or usages of the miners of said Mining District, or any state or federal law, requiring the recordation in the United States Local Land Office at Visalia, California, or in the General Land Office at Washington, D. C., of notice of any mining location made within said Mining District, and that the Visalia Land Office for the Visalia Land District, wherein all of said lands are situated, has never at any time since its organization had or kept any record of mining claims located within said Land District, until such time as locators of such mining claims made application at said Local Land Office for patents of lands covered by such mining claims; of all of which the said defendant, Southern Pacific Railroad Company, its officers and agents and the officers and agents of the Interior Department of the United States, and all branches of said Interior Department, have at all times herein mentioned had notice, and of all of which said The Kern Trading and Oil Company, and its officers and agents, have, at all times since the date of its creation had notice.

XII.

These cross-complainants further say and show

that notwithstanding said knowledge and notice, and notwithstanding the said Southern Pacific Railroad Company, its officers and agents, well knew that all of the lands described in paragraph III of this Cross-Bill were mineral lands, and Lands on which there were valid, subsisting mining locations of record as aforesaid, and that the same had not been granted to the said Southern Pacific Railroad Company, and that it had no right to have or receive the [101] said lands, and that the said lands were expressly excluded from the operations of its said grant. the said Southern Pacific Railroad Company did falsely, fraudently and corruptly cause one Jerome Madden, its then Land Agent, on or about the 9th day of May, 1892, to make and file, and that he did make and file, in the United States Local Land Office at Visalia, California, a certain false, wicked, corrupt and fraudulent affidavit and application for patents of certain lands, including, among others, the lands described in paragraph III of this Cross-Bill, in manner and form as follows, to wit:

“STATE OF CALIFORNIA,

CITY AND COUNTY OF SAN FRANCISCO.

I, JEROME MADDEN, being duly sworn, depose and say that I am the land agent of the Southern Pacific Railroad Company; that the foregoing lists of land which I hereby select, is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company, as inuring to it, to aid in the construction of the railroad of said company, from a point in the northeast quarter of Section 2,

Township 19 South, Range 20 East, M. D. B. & M. to Alcade, for which a grant of lands was made by the Acts of Congress approved July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid, and that said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of twenty miles on each side of the line of route for a continuous distance of forty 559/1000 miles, being for the 9th and 17th sections of said road, starting from a point in the northeast quarter of Section 2, Township 19 South, Range 20 East, M. D. B. & M., and ending at a [102] point in the northeast quarter of Section 23, Township 21 South, Range 14 East, M. D. B. & M.

(Signed) JEROME MADDEN.

Sworn to and subscribed before me this 9th day of May, 1892

Witness my hand and notarial seal.

E. B. RYAN.

Notary Public in and for the City and County of San Francisco, in the State of California."

And these cross-complainants allege and aver that said affidavit of said Madden, made and filed as aforesaid, was and is false, in that it states relative to all the lands included in the list to which it refers, that they were unappropriated and not interdicted mineral or reserved lands, while in fact the lands described in paragraph III of this Cross-Bill, which

were all included in said list, were, at the time of the making and filing of said affidavit, appropriated as placer mining ground, and were all interdicted mineral and reserved lands of great value, and were notoriously known to be such.

XIII.

These cross-complainants further say and show, that prior to the 14th day of May, 1892, the defendant, Southern Pacific Railroad Company, made said *ex parte* application to the Interior Department of the United States, through the Local Land Office at Visalia, California, for patent to all of the lands described in the list of lands referred to in said affidavit made by said Jerome Madden as aforesaid, but did not in said application or otherwise, ask to have the mineral or nonmineral character of said lands, or any thereof, determined before issuance of the patent which it sought in and by said *ex parte* application, and [103] that thereafter and on, to wit, the 14th day of May, 1892, the Register and Receiver of said Local Land Office did certify that they had examined said list of lands and tested the accurancy thereof by the plats and records of their office; that they found the same to be correct; that the filing of said list of lands was allowed and approved; that the whole of said lands were surveyed public lands of the United States and within the limits of twenty miles on each side of the line of said road, and that the same were not, nor was any part thereof, returned and *demoniated* as mineral lands nor claimed as swamp lands, and that there was not any homestead pre-emption State of other

valid claims to any portion of said lands on file or on record in said Local Land Office.

XIV.

These cross-complainants further say and show that thereafter, and prior to, to wit, the 27th day of June, 1894, the officers of the General Land Office examined said list of lands in connection with the records and plats of that office, upon said *ex parte* application, and found, among other things that said lands fell within the twenty miles lateral limits of said road, and that they were, so far as the records of the General Land Office showed, "free from conflict"; but these cross-complainants allege and show that the officers and agents of the Interior Department had not theretofore had, for the examination of said lands, sufficient opportunity to determine whether any of said lands were or were not mineral lands, or to justify a statement by them in the patent of the United States that said lands were nonmineral, and that neither the officers of the Local Land Office at Visalia, nor the officers of the General Land Office or of the Interior Department, ever found or determined that all of said lands were non-mineral in character, or attempted to decide or did decide whether they were or were not mineral lands. [104] And thereupon the then Commissioner of the General Land Office did in conformity with the rulings and decisions of the Interior Department which were then in full force and effect, and which had obtained and been followed by the officers of that Department in such cases for many years, to wit: forty years, recommend to the then Secretary of the

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Interior as follows, to wit:

“It is hereby recommended that the tracts described,” (in said list) “covering 440,900.85 acres, be approved and carried into patent as the lands falling within the grant by the act aforesaid to the said Southern Pacific Railroad Company, of California, excluding, however, from the approval and from the transfer in the patent that may be issued, ‘All mineral lands,’ should any such be found in the tracts aforesaid; but this exclusion, according to the terms of the Statute, ‘shall not be construed to include coal and iron.’

G. W. LAMOREAUX,
Commissioner.”

And these cross-complainants allege and show, that said recommendation of said Commissioner of the General Land Office was thereupon approved by the then secretary of the Interior, in words and figures as follows, endorsed upon said recommendation, to wit:

“Approved; covering four hundred and forty thousand, nine hundred and eighty-five hundredths of an acre.

HOKE SMITH,
Secretary.”

And these cross-complainants further allege and show, that there was no other or further finding, determination, certification or [105] recommendation made by any officer of the Interior Department at any time prior to the issuance of said alleged patent, as to the mineral or nonmineral character of

any of the lands embraced in paragraph III of this Cross-Bill, and which were afterwards included in the alleged patent hereinafter mentioned.

XV.

These cross-complainants further say and show, that thereafter and in pursuance of and in conformity with the said recommendation of the Commissioner of the General Land Office and said approval thereof by the said Secretary of the Interior, the officers of the Interior Department who were charged by the law with the duty of preparing and issuing patents to lands due to be issued by the United States, did, on, to wit: the 10th day of July, 1894, prepare, execute, issue and deliver to the said defendant, Southern Pacific Railroad Company, a certain alleged patent, a true copy of which, excepting only the descriptions of other lands not involved in this suit, is hereto attached, marked Exhibit "A," and made a part of this Cross-Bill, wherein was set forth all of said list of lands listed by said the Southern Pacific Railroad Company for patent under said grant upon its said *ex parte* application, and that immediately following said list of lands in said patent, is the entire granting clause of said alleged patent, which is in words and figures as *as* follows, to wit:

"NOW, KNOW YE, That the United States of America, in consideration of the premises and pursuant to the acts of Congress, have given and granted, and by these presents do give and grant unto the Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid, and de-

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scribed in the foregoing. [106]

Yet excluding and excepting 'All Mineral Lands,' should any such be found in the tracts aforesaid: but this exclusion and exception according to the terms of the statute shall not be construed to include 'coal and iron lands.'

TO HAVE AND TO HOLD the same, with the appurtenances, unto the said Southern Pacific Railroad Company, and to its successors and assigns forever."

XVI.

These cross-complainants further say and show to the Court that at no time during the pendency of said *ex parte* application for patent of said lands, was any notice, constructive or actual, given to any of the locators of said prior mining locations, of the application of the said Southern Pacific Railroad Company for patent to said lands; nor was there any publication of notice of such application, nor was there any hearing ordered or had in the Local Land Office at Visalia or the Interior Department, or in any branch thereof, for the purpose of allowing any persons having mining claims or other claims on any of said lands, to be heard and have their rights in or to any of said lands examined or determined, and said list of lands was certified as aforesaid without the knowledge or consent of said prior locators and without any opportunity being given to any of said prior mining locators of any of said lands to be heard in defense of their rights relative to any of said lands under said mining locations or otherwise, and the officers of the Land Department never acquired juris-

diction to cancel, and never did cancel, said prior mining locations, and never acquired jurisdiction otherwise to defeat or in any wise affect any rights of said prior locators, under said prior mining locations, and never attempted or presumed to or did molest or interfere in any way whatsoever with such rights.
[107]

XVII.

These cross-complainants further say and show unto the Court, that the said Southern Pacific Railroad Company, with full knowledge of all the facts and circumstances herein stated and alleged, did, for itself, its successors and assigns forever, accept and assent to and submit to and agree to be bound by each and all of the provisions, stipulations, terms, conditions, restrictions, limitations, exclusions and reservations in said Act and joint resolution, and said patent, or either or any of them, contained, and so accepting the same and assenting and submitting thereto and agreeing to be bound thereby, did receive and accept said alleged patent and cause the same to be recorded in the office of the Recorder of the County of Fresno and State of California, and that said defendant, Southern Pacific Railroad Company, and all persons claiming any interest in said lands, or any part thereof, under or through it by virtue of said Act of Congress and joint resolution and said patent, or any or either of them, are bound by all of said provisions, stipulations, terms, conditions, restrictions, limitations, exclusions, exceptions and reservations, and are in equity and in conscience estopped to resist or deny the binding force and effect

128 *J. I. Lamprecht and F. M. Aiken, Trustees,*
of the same, or any part of any thereof.

XVIII.

These cross-complainants further say and show, that the lands described in paragraph III of this Cross-Bill are not within the limits of twenty miles of any completed section of twenty-five consecutive miles of the line of the railroad of said defendant, Southern Pacific Railroad Company, as required by Section 4 of said Act and by said Joint Resolution, and are not coterminous with any such completed section of twenty-five consecutive miles of the line of the said railroad, and that the [108] railroad to aid in the construction of which said grant of lands was made, has never been completed, and that all of the lands described in paragraph III of this Cross-Bill lie opposite to and coterminous with an uncompleted section of twenty-five consecutive miles of said railroad line, and that prior to the certification of said list of lands and the issuance of said alleged patent as aforesaid, the said Southern Pacific Railroad Company had received from the United States, for the construction of its said railroad, land to the amount of more than ten alternate odd-numbered sections per mile for all the railroad it has ever constructed under its grant, and that said alleged patent was illegally issued, and was issued without any jurisdiction on the part of any officer or officers of the United States, or any Department thereof, to issue the same, and was issued in violation and in contravention of the provisions of Section 4 of said Act of July 27th, 1866; and these cross-complainants allege and aver that said recommendation of said list of lands for patent

by the Commissioner of the General Land Office, and said approval thereof by said Secretary of the Interior, and the issuance of said alleged patent, were all wholly without authority of law and in contravention and violation of an Act of March 3d, 1887, and that said certification and said alleged patent were and ever have been inoperative, void and of no effect, to pass or confirm to said Southern Pacific Railroad Company or to its successors or assigns, any right, title or interest in or to any of the lands described in paragraph III of this Cross-Bill.

XIX.

These cross-complainants further allege and show, that the lands described in paragraph III of this Cross-Bill were, on, to wit, the 3d day of March, 1909, vacant, unappropriated public mineral lands belonging to the United States, except for the mining locations theretofore made thereon, as alleged in [109] paragraph IX of this Cross-Bill, and that on, to wit, the 3d day of March, 1909, no annual assessment work for the year of 1908 had been done or commenced on any of said prior mining claims, and said lands were open to relocation as placer mining grounds, and that on, to wit, the 3d day of March, 1909, this complaint, and A. L. Frick, M. J. Frick, S. L. Phillips, M. E. Wall, B. McGowan and E. H. Dunweedie, acting as an association of eight persons, entered on said lands and re-located each quarter section thereof as placer mining ground, under and in accordance with the mining laws of the United States and the rules, regulations and customs of Miners in the district where said lands are situated, and posted upon each of said

quarter sections so relocated the notice of such relocation required by law to be posted, and did thereafter and on, to wit, the 6th day of March, 1909, cause copies of each of said relocation notices to be duly recorded in the office of the Recorder for the county of Fresno, State of California, which was then the proper and lawful place for the recordation of mining locations made within said County, where said lands are situated, and did thereby succeed to all the right, title and interest of said prior mining locators, in and to all of said lands and to the discoveries on which said prior mining locations were predicated.

XX.

That contemporaneous with the making of said relocations, there was a discovery of mineral by said relocators on each quarter section or one hundred and sixty acre tract of said land, and prior to said relocations and after the issuance of said patent, said lands had been properly and legally examined by the Department of the Interior and designated by it as lands bearing mineral in commercial quantities and more valuable for mining purposes than for any other purpose. [110]

XXI.

These cross-complainants further say and show that said defendants, Southern Pacific Railroad Company, and Kern Trading and Oil Company, had never, prior to the beginning of this suit, or at any time since, been in actual, open, notorious, exclusive, continuous or hostile possession, or any possession whatsoever, of any of said lands described in paragraph III of this Cross-Bill.

XXII.

These cross-complainants further allege that, subject only to the paramount title of the United States, complainant is the owner and entitled to the possession of all the lands described in paragraph III hereof, as placer mining claims under the mining laws of the United States, to the extent of one-tenth ($1/10$) undivided interest in the whole thereof; that these cross-complainants are the owners in trust for the benefit of a large number of persons, firms and corporations, other than the said defendants, the Southern Pacific Railroad Company and The Kern Trading and Oil Company, and are entitled to the possession of all of said lands described in paragraph III hereof, to the extent of an undivided nine-tenths ($9/10$) thereof, as placer mining claims, subject only to the paramount title of the United States.

XXIII.

These cross-complainants further allege and show that said alleged patent constitutes a cloud upon their said title in and to said lands, and that the reasonable and market value of each of said mining claims is upwards of Sixty Thousand Dollars (\$60,000.00), and that the reasonable and market value of these cross-complainants' said undivided interest in each of said mining claims is upwards of Fifty Thousand (\$50,000.00) Dollars. [111]

XXIV.

These cross-complainants further allege and show that the other defendants herein, claim to have some right, title or interest in or to said premises described in paragraph III hereof, or to some portion

thereof, adverse to these cross-complainants, but that all such claims are illegal and invalid, and they have not, either jointly or severally, any right, title or interest in or to the same, or any part thereof, or in or to any part of the said mining claims now subsisting thereon, and such claims constitute a cloud on the title of these cross-complainants.

WHEREFORE, your cross-complainants pray:—

First: That a construction and interpretation be made by this Court in this suit of Sections 3, 4, 6 and 18, of said Act of Congress approved July 27th, 1866, and of the joint resolution of Congress approved June 28th, 1870, and all the other Acts of Congress mentioned in this Cross-Bill, in relation to their application to the facts and circumstances stated and alleged in this Cross-Bill.

Second: That a construction and interpretation be made by this Court in this suit of the recommendation of the Commissioner of the General Land Office for the certification and approval by the Secretary of the Interior of the said list of lands, and of the approval by the Secretary of the Interior of said recommendation as set forth and alleged in this Cross-Bill, and [112] also of said patent, including the clause in said alleged patent excepting and excluding all mineral lands from conveyance by said alleged patent.

Third: That all of said defendants and said complainants be required to set forth the nature of their respective claims in and to the property described in paragraph III of this Cross-Bill, and that all claims of said defendants and said complainants in or to

said lands and said mining claims, adverse to these cross-complainants, may finally be determined by decree of this Court in this suit.

Fourth: That it may be ordered, adjudged and decreed by this Court in this suit, that none of said defendants, except J. I. Lamprecht and F. M. Aiken, Trustees as aforesaid, have any right, title or interest in or to said lands described in paragraph III of this Cross-Bill or in any part thereof, or in or to said mining claims, or any thereof, and that they and each and all of them are, and that they be estopped from claiming any right, title or interest in or to the same, and that these cross-complainants' title to said lands be quieted.

Fifth: That an interlocutory injunction in due form be issued by this Court, directed to each and all of the cross-defendants herein, except Edmund Burke, commanding them, and each of them, and all other persons claiming under or through them, to refrain and desist from any interference with the property described in paragraph III of this Cross-Bill, or the minerals therein, and from interfering with these cross-complainants' possession thereof, until the final determination of this suit, and that upon final hearing therein said injunction may be made perpetual.

Sixth: That these cross-complainants may have such other, further and different relief, order or decree, the premises being considered, as to the Court may seem just and equitable. [113]

Seventh: That a writ of subpoena of the United States issue, directed to each of the defendants herein, commanding them, on a certain day and under a cer-

tain penalty, to be and appear in this court and there to answer without oath (the answer under oath being hereby expressly waived) the premises, and to stand by and abide the decree and order as may issue against them.

D. J. HINKLEY,

Solicitor for Cross-Complainants.

BLANDIN RICE & GINN,

1300 Schofield Bldg., Cleveland, Ohio,

Of Counsel.

State of California,

County of Los Angeles,—ss.

D. J. Hinkley, being duly sworn, deposes and says that he is solicitor for the above-named cross-complainants; that he has read the foregoing Cross-Bill, and knows the contents thereof; that the same is true, of his own knowledge, except as to the matters therein alleged on information and belief, and as to those matters, he believes them to be true; that said cross-complainants are all nonresidents of the State of California, and are all absent therefrom.

D. J. HINKLEY.

Subscribed and sworn to before me, this 16th day of December, 1910.

[Seal]

M. R. KING,

Notary Public, Los Angeles County, State of California.

My commission expires Aug. 5, 1914. [114]

Exhibit "A."

PATENT.

**TO ALL TO WHOM THESE PRESENTS SHALL
COME, GREETINGS:**

WHEREAS by the Act of Congress approved July 27th, 1866, and Joint Resolution of June 28th, 1870, "to aid in the construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast" and to secure to the Government the use of the same for postal, Military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a Railroad and Telegraph Line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said Company, "every alternate section of public land designated by odd numbers, to the amount of twenty alternate *section* per mile on each side of said railroad, on the line thereof, and within the limits of twenty miles on each side of said road" "not sold, reserved, or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

AND WHEREAS, Official statements from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the

fourth section of the said Act of July 27th, 1866, have reported to him, that the line of said railroad and telegraph line from San Jose to *Tre Pimos* and from Alcalde to Mojave, together comprising Two Hundred and Fifty-two miles and four hundred and seventy-nine thousandths of a mile has been constructed and fully completed and equipped in the manner prescribed by said [115] Act of Congress of July 27th, 1866, and accepted by the President.

AND WHEREAS, the following tracts have been duly listed under the Act aforesaid by the duly authorized land agent of the said Southern Pacific Railroad Company, as shown by his original lists of selections approved by the local officers and on file in this office.

AND WHEREAS the said tracts of land lie coterminous to the constructed line of said road and particularly described as follows, to wit:

South of base line and east of Mt. Diablo Meridian, State of California.

Township Nineteen, Range fifteen.

All of Section 33, containing 640 acres.

(With other land)

The said tracts as described in the foregoing make the aggregate area of 440,900.85 acres.

NOW, KNOW YE, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, Have Given and Granted and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the fore-

going. Yet excluding and excepting "All Mineral Lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, shall be constructed to include "Coal and Iron Lands."

TO HAVE AND TO HOLD the same with the appurtenances unto the said "Southern Pacific Railroad Company" and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I, GROVER CLEVELAND, President of the United States, have caused these letters to be made patent [116] and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this, the Tenth day of July, in the year of our Lord One Thousand eight hundred and ninety-four and the Independence of the United States, the one hundred and nineteenth.

By the President:

GROVER CLEVELAND.

[Seal]

M. McKEAN,
Secretary.

L. Q. LAMAR,

Recorder of the General Land Office.

Recorded in Vol. 14, pp. 103 to 142, inclusive.

Patent No. 22.

Recorded Feb. 16, 1895, at 8:27 o'clock A. M., in Vol. P. of Patents, page 283 et seq., Fresno County Records.

[Endorsed]: No. 192. Circuit Court of the United States for the Southern District of California, North-

138 *J. I. Lamprecht and F. M. Aiken, Trustees,*
ern Division. In Equity. Edmund Burke, Com-
plainant, vs. Southern Pacific Railroad Company, et
al., Defendants, and J. I. Lamprecht, et al., Cross-
Complainants, vs. Southern Pacific Railroad Com-
pany, et al., Cross-defendants. Cross-bill. Filed
Jan. 10, 1911. Wm. M. Van Dyke, Clerk. By Chas.
N. Williams, Deputy Clerk. D. J. Hinkley, Solicitor
for Cross-complainants. # 1008. Wright & Cal-
endar Building, Los Angeles, California. [117]

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial
Circuit, Southern District of California, North-
ern Division.*

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-
PANY, et al.,

Defendants.

Decree.

This cause having come on regularly for hearing
on the joint and several demurrer of defendants
Southern Pacific Railroad Company and Kern Trad-
ing and Oil Company, to complainant's amended
bill of complaint; on the joint and several demurrer
of defendants, Southern Pacific Railroad Company
and Kern Trading and Oil Company, to the cross-
bill of complaint of John I. Lamprecht and F. M.

Aiken; on the amended demurrer of T. S. Minot, to the first amended bill of complaint, and on the demurrer of defendant, T. S. Minot to the cross-bill of complaint of Jno. I. Lamprecht and F. M. Aiken; and the Court, after hearing arguments of counsel and after due deliberation thereon, thereafter, on the 13th day of March, 1911, having by its order made and entered herein, sustained said demurrers, and having further ordered that the bill of complaint and the cross-bill of complaint be dismissed at the cost of the respective complainants,

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed, that the complainant's said bill of complaint and the said cross-bill of complaint of John I. Lamprecht and F. M. Aiken be, and they hereby are dismissed, and that said defendants to the bill of complaint recover from complainant, their, the said defendants', costs incurred herein by reason of the bill of [118] complaint, taxed at \$18.90/100 in favor of defendants, Southern Pacific Railroad Co., and Kern Trading and Oil Company; and that the said defendants to the cross-bill of complaint recover from cross-complainants, their, the said defendants', costs incurred herein by reason of the said Cross-bill of Complaint, taxed at \$.40/100 in favor of Southern Pacific Railroad Company and

140 *J. I. Lamprecht and F. M. Aiken, Trustees,*
Kern Trading and Oil Company.

Los Angeles, March 21, 1911.

ROSS,
Circuit Judge.

Decree entered and recorded March 21st, 1911.

WM. M. VAN DYKE,
Clerk.

By Chas. N. Williams,
Deputy Clerk.

[Endorsed]: No. 192. U. S. Circuit Court, Ninth Circuit, Southern District of California, Northern Division. Edmund Burke, Complainant, vs. The Southern Pacific Railroad Company, et al., Defendants. Decree. Filed Mar. 21, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.
[119]

[Opinion.]

*In the United States Circuit Court in and for the
Southern District of California, Northern Di-
vision.*

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
et als.,

Defendants.

The views expressed in the opinion delivered in the case of Roberts et al. vs. Southern Pacific Railroad Company, just decided, applied to this case, makes necessary the sustaining of the demurrers to

the bill and cross-bill and their dismissal at the cost of the respective complainants. An order to that effect will be entered.

[Endorsed]: No. 192. In the United States Circuit Court, Ninth Judicial Circuit, Southern District of California, Northern Division. Edmund Burke vs. Southern Pacific Railroad Company, et al., Opinion. Filed Mar. 13, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [120]

**[Opinion in Roberts et al. v. Southern Pacific
Company et al.]**

*In the United States Circuit Court in and for the
Southern District of California, Northern Di-
vision.*

GEORGE D. ROBERTS et al.,

Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY et als.,

Defendants.

Stripped of the mass of irrelevant and redundant matter contained in the pleadings, the case presented is this: Can a citizen of the United States, or one having declared his intention to become such, lawfully enter upon and claim as mineral ground land theretofore patented by the Government to a railroad company under a congressional grant, such patents, after describing the land thereby conveyed, containing the clause, "Yet excluding and excepting 'all mineral lands,' should any such be found in the tracts aforesaid. But this exclusion and exception,

according to the terms of the statute, shall not be construed to include 'coal and iron land.' "

The complainants' alleged rights to the lands in question in this suit were, according to their express allegation, not acquired until 15 years after the issuance of patents to the Southern Pacific Railroad Company therefor, at which time they claim to have made mineral locations upon them, and by this suit, the nature of which is variously characterized by their counsel, they ask the Court to protect their alleged rights as such mineral locators, by some sort of injunctive process, by "controlling" the patents which were issued by the Government, [121] and which they expressly alleged conveyed the legal title to the land to the grantee therein named.

If the above quoted clause inserted in the patents had the effect of excepting from the lands described in the granting clause thereof all of such lands in which mineral might thereafter be found, the discovery of mineral in the lands in suit by the complainants, if such has been made as alleged, 15 years after the issuance of the patents, would undoubtedly defeat the grant under which the defendants hold, for the reason that the clause is without limitation as to time, and a determination by a court or jury, as the case might be, at any subsequent date, however remote, that any of the land described in the granting clause of the patents had turned out to be mineral land, would thereby necessarily determine that such land was never within the terms of the railroad grant made by Congress, notwithstanding the fact that the officers of the Government, charged

with the duty of inquiring into and determining the question and of issuing the Government patent for the lands granted, had issued such conveyance. A mere statement of the necessary consequences of the complainants' contention is enough to show that it cannot be sound. It would make of the patents a delusion and a snare instead of a muniment of title designed for the peace and security of those holding under them. Undoubtedly, if the lands in suit were known to be mineral lands at the time they were applied for by the railroad company under the congressional grant to it, and if the patenting of them was, as alleged by the complainants, procured by means of the false affidavit of its land agent, or through any other fraud on its part, the Government, or anyone in privity with the Government, could justly complain and by suit, brought within the time fixed by Congress for that purpose, procure a cancellation of such patents. But this is not such a suit. Neither the Government, nor anyone [122] in privity with the Government title, is here complaining. The suit is by strangers to that title, for by the express averments of the bill, the complainants' alleged rights were not initiated until years after the issuance of the patents which they expressly allege conveyed to the railroad company the legal title to the lands. That the complainants cannot be heard to complain of the alleged frauds upon the Government is thoroughly settled by decisions so numerous as to make their citation unnecessary. They must be familiar to all lawyers at all acquainted with the law in respect to the

public lands. The only real question, therefore, in the case is whether the lands in suit are excluded from the patents by reason of the alleged subsequent discovery of mineral therein by the complainants, under the exception clause inserted in the patents, already quoted, but which I here repeat:

“Yet excluding and excepting ‘all mineral lands,’ should any such be found in the tracts aforesaid. But this exclusion and exception, according to the terms of the statute, shall not be construed to include ‘coal and iron lands.’ ”

Where did the officers of the Government, charged with the duty of issuing patents for lands granted by Congress, get authority to cast upon courts or juries the duty or power of ascertaining and determining the character of the public lands applied for under the grant, which Congress devolved upon the Land Department of the Government as a prerequisite to the issuance of a patent therefor? The statutes of the United States will be searched in vain for any such authority, unless it can be deduced from the Joint Resolution of Congress of June 28, 1870 (16 Stats. 382), relating to the grant to the Southern Pacific Railroad Company made by its preceding act of July 27, 1866 (14 Stats. 292).

By the latter act Congress chartered the Atlantic and Pacific Railroad Company, empowered it to build a railroad commencing [123] at a point at or near Springfield, Missouri, along a generally described route to the Colorado River, and, after crossing that river, by the most practicable and eligible route to the Pacific Ocean—granting to such com-

pany by the third section of the Act:

“Every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office.”

The 18th section of the Act made a grant to the Southern Pacific Railroad Company, and is as follows:

“And be it further enacted, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.”

By section 4 of the Act it was provided that whenever the Railroad Company "shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the [124] service contemplated, the President of the United States shall appoint three Commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

As recited in the foregoing Act of Congress, the Southern Pacific Railroad Company was a corporation of the State of California, and by its charter was authorized to build a railroad "from some point on the Bay of San Francisco, in the State of Cali-

fornia, through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the eastern line of said State of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi River.”

The Act of 1866, as has been seen, authorized the Southern Pacific Railroad Company to connect with the Atlantic and Pacific Railroad “at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line [125] to San Francisco.” That company undertook to lay out a different route from that designated in its articles of incorporation, and on the 3d day of January, 1867, filed with the Commissioner of the General Land Office a map showing the line of route so adopted by the company, and on the 4th of the succeeding month the then Secretary of the Interior directed the Commissioner of the General Land Office to cause to be withdrawn from sale or disposal the odd sections within the granted limits of twenty miles on each side of the road, as shown on the map so filed January 3, 1867, and also the odd sections outside of the twenty miles and within thirty miles on each side of the said route, from which indemnity for land otherwise disposed of by the Government within the granted limits should be taken. July 14, 1868, the said order of withdrawal was revoked and the lands included therein were opened to sale. On the 20th of August following the latter order was suspended, so far as it related to lands south of San Jose, California, and Novem-

ber 2 and 11, 1869, the then Secretary of the Interior revoked the suspension of August 20, 1868, and directed the restoration to sale, after sixty days' notice of the lands included in the suspension order. On the 15th of the next month the orders of November 2 and 11, made the preceding month, were suspended. (Opinions of Attorney General, Vol. 16, pp. 80-89). July 25, 1868, the time for the construction of the road by the Southern Pacific Railroad Company was extended by Congress (15 Stats. 187), and on June 28, 1870, Congress passed the Joint Resolution in question, which is here set out in full:

“Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section [126] by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been

constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act."

In their brief counsel for the complainants ask the court to "account for, explain, construe, interpret, and apply" the foregoing saving clause. The reason for and purpose of it is quite fully set forth in the debate in the Senate upon the resolution, where it was first introduced (Congressional Record, part V, 2nd Session, 41 Congress 1869-1870, pp. 3950, 3951, 3952, 3953).

While asking the Court to account for and explain the clause, counsel at the same time assert that the Court is not at liberty to refer to the debate in the Senate upon the subject. It is quite true that the meaning of the clause is to be determined from the language used by Congress, but counsel are mistaken in supposing and asserting it to be improper for the Court to refer to the debate. In *Binns v. United States*, 194 U. S. 486, 495, the Supreme Court said:

"While it is generally true that debates in Congress are not appropriate sources of information from which to discover the meaning of the language

of a statute passed by that body, United [127] States v. Freight Association, 166 U. S. 290, 318, yet it is also true that we have examined the reports of the committees of either body with a view of determining the scope of statutes passed on the strength of such reports. *Holy Trinity Church v. United States*, 143 U. S. 457, 464. When sections 461 and 462 were under consideration in the Senate the chairman of the Committee on Territories, in response to inquiries from Senators, made these replies:

“The Committee on Territories have thoroughly investigated the condition of affairs in Alaska and have prepared certain licenses which in their judgment will create a revenue sufficient to defray all the expenses of the Government of the Territory of Alaska. * * * They are licenses peculiar to the condition of affairs in the Territory of Alaska on certain lines of goods, articles of commerce, etc., which, in the judgment of the committee, should bear a license, inasmuch as there is no taxation whatever in Alaska. Not one dollar of taxes is raised on any kind of property there. It is therefore necessary to raise revenue of some kind, and in the judgment of the Committee on Territories, after consultation with prominent citizens of the Territory of Alaska, including the governor and several other officers, this code or list of licenses was prepared by the committee. It was prepared largely upon their suggestions and upon the information of the committee derived from conversing with them.’ Vol. 32, Congressional Record, Part III, page 2235.”

In *Jennison v. Kirk*, 98 U. S. 453, the same Court, in construing an act of Congress and in referring to and setting forth certain statements of one of the Senators made in the Senate, said:

“These statements of the author of the act in advocating its adoption cannot, of course, control its construction, where there is doubt as to its meaning; but they show the condition of [128] mining property on the public lands of the United States, and the tenure by which it was held by miners in the absence of legislation on the subject, and thus serve to indicate the probable intention of Congress in the passage of the act.”

In the case of *People v. Stephens*, 62 Cal. 209, 235, 236, the Supreme Court of California, in construing one of the provisions of the constitution of the State, referred to the purpose of the provision as explained in the debates in the constitutional convention by the member at whose instance it was inserted and became a part of the constitution. See also *Wadsworth v. Boisen*, 148 Fed. 771. 778; *Ho Ah Kow v. Nunan*, Fed. Case No. 6546.

Turning to the debate in the Senate upon the saving clause added to the joint resolution of June 28, 1870, it is readily seen that its purpose was to protect those settlers who had located upon public lands along the line of the proposed changed route of the Southern Pacific Railroad Company, as indicated by the map filed by that company in the General Land Office on the 3rd of January, 1867. By the Joint Resolution Congress sanctioned the change of route and made to the Southern Pacific Railroad Company

a precisely similar grant of land on each side of that line that it had made to the same company by the 18th section of the act of July 27, 1866, on each side of the line of road therein authorized; but to protect not only those who had acquired or might acquire prior to the attaching of the grant a legal right to lands along the line of the changed route, but also all *actual* settlers thereon, Congress provided in and by the Joint Resolution that the change of route thereby authorized and the grant of lands thereby made should not affect the rights of any actual settler, and further that the grant of lands thereby made to the Southern Pacific Railroad Company along the new route was and should be subject to the same conditions and restrictions as applied to the original grant made to that company in and by the [129] act of July 27, 1866—the language of the Joint Resolution being, as has been seen: “Expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act.”

Those conditions and restrictions are specifically stated in the Act of 1866 and are, in substance, that the grant should not apply to any mineral land nor to any land reserved, sold, granted or otherwise appropriated, nor to any land to which the United States did not have full title and which was not free from pre-emption or other claims or right at the time the line of the road should be designated by a plat thereof filed in the office of the Commissioner of the General Land Office. Such are the express provisions of the grant of July 27, 1866, expressly

referred to in the Joint Resolution for the conditions and restrictions of the grant of the lands thereby made along the line of road thereby authorized to be built. There is absolutely nothing in the saving clause of the Joint Resolution, in my opinion, either requiring or authorizing the patents thereby directed to be issued for the granted lands to contain those conditions or restrictions, or any of them. If such patents were thereby required or authorized to contain one of the conditions or restrictions, then manifestly they were required to contain all of them, for no distinction is made between them by Congress and none can be found in the language of its acts in question. Clearly, therefore, if the contention of the complainants' counsel is correct, that by the Joint Resolution of June 28, 1870, Congress required that the patents to be issued to the railroad company for lands within the grant made to it should contain an exception of all mineral lands, they were likewise required to contain a similar exception of all lands reserved, sold, granted or otherwise appropriated, and all land to which the United States did not have [130] full title and which was not free from pre-emption or other claims or rights at the time the line of the grantee's road was designated by a plat thereof filed in the office of the Commissioner of the General Land Office. There is no escape from this conclusion for I repeat that the statute makes no distinction between the conditions and restrictions of the grant, save only the rights of actual settlers therein expressly specified, and no distinction in the other conditions and restrictions of this grant has been or

can be suggested by counsel for the simple reason that the statute contains none. The result is that, according to the contention of counsel for the complainants, we would have Congress providing for the issuance of Government patents for lands under its grant which upon their face would leave open for all time, to be decided by courts or juries, as the case might be, not only the question as to the character of the land patented but also as to whether it had been reserved, sold, granted or otherwise appropriated, and as to whether the United States had full title, and whether it was free from pre-emption or other claims or rights at the time the railroad company designated the line of its road by filing a plat thereof in the office of the Commissioner of the General Land Office. As a matter of course, Congress never intended anything of the sort, and there is nothing in the acts in question nor in any other grant to any railroad company that has ever come under my observation, or in any decision of the Supreme Court, that gives any support to any such conclusion.

The patent was the last step in the proceedings provided for by Congress and was designed, as the statute expressly declares, to convey the Government title to the grantee. Of what avail would such an instrument, intended for the peace and security of the holder, be if the antecedent facts upon which it is required to be based are open to subsequent inquiry and contestation [131] by strangers to the title? As well might it be contended that questions of fact in respect to the marking of the boundaries of a patented mining claim or the previous discovery of

mineral therein, or any other fact made essential by the statute to the issuance of a mining patent, are open to inquiry by the courts subsequent to its issue. In respect to such a contention this Court said in the case of *Doe v. Waterloo Mining Co.*, 54 Fed. 935, 940:

“If the rights conferred by the patent can be defeated by showing a want of parallelism of the end lines in the original location, it is difficult to understand why the patent may not likewise be defeated by showing that the original location was void because its boundaries were not properly marked upon the ground, or because no vein, lode, or ledge was discovered within them, or because the statutory requirement in respect to the posting of the notice of location was not complied with, or because of an omission on the part of the locator to comply with any other provision of the statute regarding the location of such lode claims. All such matters I understand to be absolutely concluded by the patent so long as it stands unrevoked. If questions relating to the boundaries of the location, the marking of them, the discovery of a vein, lode, or ledge within them, the posting of the required notice, etc., are open to contestation after the issuance of a patent for the claim as before, the issuance of such an instrument would be a vain act, and would wholly fail to secure to the patentee the rights and privileges designed by the law authorizing its issue. The very purpose of the patent is to do away with the necessity of going back to the facts upon which it is based.”

Great reliance is placed by counsel for the com-

plainants on this clause from the opinion of the Supreme Court in the case of *Barden v. Northern Pacific Railroad Co.*, 154 U. S. 288: [132]

“The delay of the Government in issuing a patent to the plaintiff, of which great complaint is made, does not affect the power of the company to assert, in the meantime, by possessory action, (as held in *Deseret Salt Company v. Tarpey*, 142 U. S. 241,) its right to lands which are in fact nonmineral. But such delay, as well observed, cannot have the effect of entitling it to recover, as is contended in this case, lands which it admits to be mineral. The Government cannot be reasonably expected to issue its patent, and it is not authorized to do so, without excepting mineral lands, until it has had an opportunity to have the country, or that part of it for which a patent is sought, sufficiently explored to justify its declaration in the patent, which would be taken as its determination, that no mineral lands exist therein.”

The observation that “the Government cannot be reasonably expected to issue its patent, and it is not authorized to do so, without excepting mineral lands, until it has had an opportunity to have the country, or that part of it for which a patent is sought, sufficiently explored to justify its declaration in the patent” is very far from saying, much less deciding, that a patent issued for lands in pursuance of such a grant must or may except from the lands described in the granting clause thereof all mineral lands. The Court could not have so decided in that case, for there was no such question before the Court, and could not have been, as no patent had been issued in

the case there under consideration. It was an action by the Northern Pacific Railroad Company to recover certain lands, confessedly mineral in character, as a part of its land grant, which grant, like the one here in question, excluded all mineral land therefrom, on the ground that when that grant became attached to the various sections within it by the definite location of the company's line [133] of road, the land in suit was not known to be mineral land; and the question in the case, as will be readily seen from the prevailing as well as the dissenting opinions, was whether that fact entitled the railroad company to the land sued for as part of its grant, or whether such land was excluded from the grant by the discovery of its mineral character at any time prior to the issuance of the Government patent therefor. The majority of the court held that the character of the land was open to inquiry at any time prior to the issuance of the patent, and that the discovery of its mineral character at any time before it was patented necessarily excluded it from the grant, because the grant was of nonmineral land only. But the Court in the prevailing opinion distinctly pointed out that the duty of ascertaining and determining the character of the land rested upon the officers of the Land Department, and there is, I think, nothing in it even tending to show that that or any other matter of fact could be left by them to the ascertainment and determination of a Court or jury subsequent to the issuance of the Government patent. The Court said:

“The law places under the supervision of the Interior Department and its subordinate officers, acting

under its direction, the control of all matters affecting the disposition of public lands of the United States, and the adjustment of private claims to them under the legislation of Congress. It can hear contestants and decide upon the respective merits of their claims. It can investigate and settle the contentions of all persons with respect to such claims. It can hear evidence upon and determine the character of lands to which different parties assert a right; and when the controversy before it is fully considered and ended, it can issue to the rightful claimant the patent provided by law, specifying that the lands are of the character for which a patent is authorized. It can thus determine whether the lands called [134] for are swamp lands, timber lands, agricultural lands, or mineral lands, and so designate them in the patent which it issues. The act of Congress making the grant to the plaintiff provides for the issue of a patent to the grantee for the land claimed, and as the grant excludes mineral lands in the direction for such patent to issue, the Land Office can examine into the character of the lands and designate it in its conveyance.

“It is the established doctrine, expressed in numerous decisions of this court, that wherever Congress has provided for the disposition of any portion of the public lands, of a particular character, and authorizes the officers of the Land Department to issue a patent for such land upon ascertainment of certain facts, that department has jurisdiction to inquire into and determine as to the existence of such facts, and in the absence of fraud, imposition, or mistake,

its determination is conclusive against collateral attack.

“In *Smelting Co. v. Kemp*, 104 U. S. 636, 640, 641, this court thus spoke of the Land Department in the transfer of public lands: ‘The patent of the United States is the conveyance by which the nation passes its title to portions of the public domain. For the transfer of that title the law has made numerous provisions, designating the persons who may acquire it and the terms of its acquisition. That the provisions may be properly carried out the Land Department, as part of the administrative and executive branch of the Government, has been created to supervise all the various proceedings taken to obtain title from their commencement to their close. In the course of their duty the officers of that department are constantly called upon to hear testimony as to matters presented for their consideration and to pass upon its competency, credibility, and weight. In that respect they exercise a judicial function, and therefore it has [135] been held in various instances by this Court that their judgment as to matters of fact properly determinable by them is conclusive, when brought to notice in a collateral proceeding. Their judgment in such cases is like that of other special tribunals upon matters within their exclusive jurisdiction, unassailable except by a direct proceeding for its correction or annulment. The execution and record of the patent are the final acts of the officers of the Government for the transfer of its title, and as they can be lawfully performed only after certain steps have been taken, that instrument,

duly signed, countersigned, and sealed, not merely operates to pass the title, but is in the nature of an official declaration by that branch of the Government to which the alienation of the public lands, under the law, is entrusted, that all the requirements preliminary to its issue have been complied with. The presumptions thus attending it are not open to rebuttal in an action of law.'

"In *Steele v. Smelting Co.*, 106 U. S. 447, 450, the language of the Court was that: 'The Land Department, as we have repeatedly said, was established to supervise various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualification of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation.'

"In *Heath v. Wallace*, 138 U. S. 573, 585, it was held that 'the question whether or not lands returned as "subject to periodical overflow" are "swamp and overflowed lands" is a question of fact properly determinable by the Land Department.' And Mr. [136] Justice Lamar added: 'It is settled by an unbroken line of decisions of this Court in land jurisprudence that the decisions of that department upon matters of fact within its jurisdiction are, in the ab-

sence of fraud or imposition, conclusive and binding on the courts of the country.' If the Land Department must decide what lands shall not be patented because reserved, sold, granted, or otherwise appropriated, or because not free from pre-emption or other claims or rights at the time the line of the road is definitely fixed, it must also decide whether lands are excepted because they are mineral lands. It has always exercised this jurisdiction in patenting lands which were alleged to be mineral, or in refusing to patent them because the evidence was insufficient to show that they contained minerals in such quantities as to justify the issue of the patent. If, as suggested by counsel, when the Secretary of the Interior has under consideration a list of lands to be patented to the Northern Pacific Railroad Company, it is shown that part of said lands contain minerals of gold and silver, discovered since the company's location of its road opposite thereto, he would not perform his duty, stated in *Knight v. Land Association*, 142 U. S. 161, 178, as the 'supervising agent of the Government to do justice to all claims and preserve the rights of the people of the United States,' by certifying the list until corrected in accordance with the discoveries made known to the department. He would not otherwise discharge the trust reposed in him in the administration of the law respecting the public domain.

"There are undoubtedly many cases arising before the Land Department in the disposition of the public lands where it will be a matter of much difficulty on the part of its officers to ascertain with accuracy

whether the lands to be disposed of are to be deemed mineral lands or agricultural lands, and in such [137] cases the rule adopted that they will be considered mineral or agricultural as they are more valuable in the one class or the other, may be sound. The officers will be governed by the knowledge of the lands obtained at the time as to their real character. The determination of the fact by those officers that they are one or the other will be considered as conclusive.

“In the case of the Central Pacific Railroad Company v. Valentine, 11 Land Dec. 238, 246, the late Secretary of the Interior, Mr. Noble, speaks of the practice of the Land Department in issuing patents to railroad lands. His language is: ‘The very fact, if it be true, that the office of the patent is to define and identify the land granted, and to evidence the title which vested by the act, necessarily implies that there exists jurisdiction in some tribunal to ascertain and determine what lands were subject to the grant and capable of passing thereunder. Now, this jurisdiction is in the Land Department, and it continues, as we have seen, until the lands have been either patented or certified to or for the use of the railroad company. By reason of this jurisdiction it has been the practice of that department for many years past to refuse to issue patents to railroad companies for lands found to be mineral in character at any time before the date of patent. Moreover, I am informed by the officers in charge of the mineral division of the Land Department that ever since the year 1867 (the date when that division was organ-

ized) it has been the uniform practice to allow and maintain mineral locations within the geographical limits of railroad grants, based upon discoveries made at any time before patent or certification where patent is not required. This practice having been uniformly followed and generally accepted for so long a time there should be, in my judgment, the clearest evidence of error as well as the strongest reasons of policy and justice controlling before a departure from it should be sanctioned. It has, [138] in effect, become a rule of property.'

"It is true that the patent has been issued in many instances without the investigation and consideration which the public interest requires; but if that has been done without fraud, though unadvisedly by officers of the Government charged with the duty of supervising and attending to the preparation and issue of such patents, the consequence must be borne by the Government until by further legislation a stricter regard to their duties in that respect can be enforced upon them. The fact remains that under the law the duty of determining the character of the lands granted by Congress, and stating it in instruments transferring the title of the Government to the grantees, reposes in officers of the Land Department. Until such patent is issued, defining the character of the land granted and showing that it is nonmineral, it will not comply with the act of Congress in which the grant before us was made to plaintiff. The grant, even when all the acts required of the grantees are performed, only passes a title to nonmineral lands; but a patent issued in proper

form, upon a judgment rendered after a due examination of the subject by officers of the Land Department, charged with its preparation and issue, that the lands were nonmineral, would unless set aside and annulled by direct proceedings, estop the Government from contending to the contrary, and as we have already said in the absence of fraud in the officers of the department, would be conclusive in subsequent proceedings respecting the title.”

I do not find in this language of the prevailing opinion in the Barden case any support for the contention of the complainants’ counsel that the officers of the Land Department were required or authorized to insert in the patents here in question, or in any other similar patent, after describing the lands falling within the railroad grant, a clause “excluding and excepting [139] all mineral lands, should any such be found in the tracts aforesaid.” And that the Supreme Court itself takes the same view of the decision in the Barden case is, I think shown by its reference thereto in the case of *Shaw v. Kellogg*, 170 U. S. 313, where, at page 339, it says:

“Defendant relies largely on the decision of this Court in *Barden v. Northern Pacific Railroad*, 154 U. S. 288, in which it was held that lands identified by the filing of the map of definite location as within the scope of the grant made by Congress to that company, although at the time of the filing of such map not known to contain any mineral, did not pass under the grant if before the issue of the patent mineral was discovered. But that case, properly considered, sustains rather the contentions of the plaintiff. It is

true there was a division of opinion, but that division was only as to the time at which and the means by which the nonmineral character of the land was settled. The minority were of the opinion that the question was settled at the time of the filing of the map of definite location. The majority, relying on the language in the original Act of 1864 making the grant, and also on the joint resolution of January 30, 1865, which expressly declared that such grant should not be 'construed as to embrace mineral lands, which in all cases shall be and are reserved exclusively to the United States,' held that the question of mineral or nonmineral was open to consideration up to the time of issuing a patent. But there was no division of opinion as to the question that when the legal title did pass—and it passed unquestionably by the patent—it passed free from the contingency of future discovery of minerals."

I am also of the opinion that the case last referred to—*Shaw vs. Kellogg*—is direct authority for the proposition that the officers of the Land Department had no authority to insert [140] in the patents under consideration the clause excepting from the lands described in its granting clause "all mineral lands, should any such be found in the tracts aforesaid." The grant involved in *Shaw v. Kellogg* was made by section 6 of an act of Congress passed June 21, 1860 (12 Stats. 71), in settlement of a claim under a Mexican grant to land in the vicinity of Los Vegas by which the claimants were given an equal amount of nonmineral and vacant land to be by them elsewhere selected in the territory of New Mexico, to be

located in a certain form and within a certain time. It was by the act made the duty of the surveyor general of New Mexico to make survey and location of the land so selected. The grantees made their selection and applied for the land. Certain correspondence occurred between the Land Department and the surveyor general in respect to the form of the application and in respect to the evidence relating to the character of the land, that is to say, whether or not it was mineral land, which resulted in the Land Department instructing the surveyor general to approve the selection and make a survey thereof. The Land Department subsequently approved the survey, field-notes and plat of the surveyor general, but in doing so added the words, "Subject to the conditions and provisions of Section 6 of the Act of Congress approved June 21, 1860," which, as has been seen, excluded mineral land from the grant. The Act of Congress did not provide for the issuance of a patent, but the Land Department noted on its maps that this tract had been segregated from the public domain and had become private property and so reported to Congress, which never questioned the validity of such action. The grantees were also notified and took possession of the land. Many years afterwards a portion of it was claimed as mineral land by a party whose contentions were thus stated by the Supreme Court in its opinion: [141]

"These contentions are that Congress granted only nonmineral lands; that this particular tract is mineral land, and therefore by the terms of the act is not within the grant; that no patent has ever been issued,

and *thereof* the legal title has never passed from the Government; that the Land Department never adjudicated that this was nonmineral land, but on the contrary, simply approved the location, subject to the conditions and provisions of the act of Congress, thereby leaving the question of title to rest in perpetual abeyance upon possible future discoveries of mineral within the tract."

In considering the limitation undertaken to be imposed by the Land Department upon its approval of the selection of the land by the grantees and the surveyor general's survey, field-notes and plat thereof, the Supreme Court said:

"What is the significance of, and what effect can be given to the clause inserted in the certificate of approval of the plat that it was subject to the conditions and provisions of the act of Congress? We are of the opinion that the insertion of any such stipulation and limitation was beyond the power of the Land Department. Its duty was to decide and not to decline to decide; to execute and not to refuse to execute the will of Congress. It could not deal with the land as an owner and prescribe the conditions upon which title might be transferred. It was agent and not principal. Congress had made a grant, authorized a selection within three years, and directed the surveyor general to make survey and location, and within the general powers of the Land Department it was its duty to see that such grant was carried into effect and that a full title to the proper land was made. Undoubtedly it could refuse to approve a location on the ground that the land was mineral. It was its duty

to decide the question—a duty which it could not avoid or evade. It could not say to the [142] locator that it approved the location provided no mineral should ever thereafter be discovered, and disapproved if mineral were discovered; in other words, that the locator must take the chances of future discovery of minerals. It was a question for its action and its action at the time. The general statutes of Congress in respect to homestead, pre-emption and townsite locations provide that they shall be made upon lands that are nonmineral, and in approving any such entry and issuing a patent therefor could it be tolerated for a moment that the Land Department might limit the grant and qualify the title by a stipulation that if thereafter mineral should be discovered the title should fail? It cannot in that way avoid the responsibility of deciding and giving to the party seeking to make the entry a full title to the land or else denying it altogether. As said in *Deffebach v. Hawks, supra*, 406:

“ ‘The position that the patent to the plaintiff should have contained a reservation excluding from its operation all building and improvements not belonging to him, and all rights necessary or proper to the possession and enjoyment of the same, has no support in any legislation of Congress. The land officers, who are merely agents of the law, had no authority to insert in the patent any other terms than those of conveyance, with recitals showing a compliance with the law and the conditions which it prescribed.’ ”

It results from what has been said that the demur-

rers must be, and are, sustained and the bills dismissed at the complainant's cost.

ROSS,

Circuit Judge. [143]

[Endorsed]: No. 177. In the United States Circuit Court, Ninth Judicial Circuit, Southern District of California, Northern Division. George D. Roberts et al. vs. Southern Pacific Company et al. Opinion of the Court. Filed Mar. 13, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [144]

In the Circuit Court of the United States for the Southern District of California, Northern Division.

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendants,

and

J. I. LAMPRECHT et al.,

Cross-Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Cross-Defendants.

Stipulation [as to Amendment of Record].

It is hereby stipulated and agreed by and between

170 *J. I. Lamprecht and F. M. Aiken, Trustees,*

J. I. Lamprecht and F. M. Aiken, Trustees, cross-complainants in the above-entitled cause, and Southern Pacific Railroad Company and The Kern Trading and Oil Company, cross-defendants in said cause, by their respective solicitors, that to amend the record an order may be made and entered in said cause as of the 11th day of January, 1911, that the Cross-Complaint filed in said cause by said cross-complainants on the 10th day of January, 1911, stand and be taken as the Cross-Complaint of said cross-complainants in said cause; and that the joint and several demurrer of said cross-defendants, Southern Pacific Railroad Company and The Kern Trading and Oil Company, filed on the [145] eleventh day of November, 1910, to the Cross-Complaint filed on behalf of said cross-complainants on the 31st day of October, 1910, stand as the joint and several demurrer of said cross-defendants, Southern Pacific Railroad Company and The Kern Trading and Oil Company, to said Cross-Complaint filed on the 10th day of January, 1911, as was intended by stipulation by and between said parties filed in said cause on January 9th, 1910.

April 4th, 1911.

DELBERT J. HINKLEY and
BLANDIN, RICE & GINN,
Solicitors for Cross-Complainants.
WM. SINGER,
GUY V. SHOUP and
D. V. COWDEN,
Solicitors for Cross-Defendants.

[Endorsed]: No. 192. Circuit Court of the United States for the Southern District of California, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific Railroad Co. et al., Defendants, and J. I. Lamprecht et al., Cross-complainants, vs. Southern Pacific Railroad Co. et al., Cross-defendants. Stipulation. Filed Apr. 6, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [146]

In the Circuit Court of the United States, for the Southern District of California, Northern Division.

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendants,

and

J. I. LAMPRECHT et al.,

Cross-Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Cross-Defendants.

Order [Amending Record].

At a session of said court held in the courtroom in the Federal Building in the City of Los Angeles on the 5th day of April, 1911. Present—Honorable WILLIAM W. MORROW, Circuit Judge.

Upon the reading and filing of stipulation by and between J. I. Lamprecht and F. M. Aiken, Trustees, cross-complainants in the above-entitled cause, and Southern Pacific Railroad Company and The Kern Trading and Oil Company, cross-defendants in said cause, by the respective solicitors, for amendment of the record in said cause, [147]

IT IS ORDERED as of the 11th day of January, 1911, that the cross-complaint filed in said cause on the 10th day of January, 1911, stand as the cross-complaint of said cross-complainants; and that the joint and several demurrer of said cross-defendants, Southern Pacific Railroad Company and The Kern Trading and Oil Company, filed on the 11th day of November, 1910, to a cross-complaint filed on behalf of said cross-complainants, J. I. Lamprecht and F. M. Aiken, on the 31st day of October, 1910, stand as the joint and several demurrer of said cross-defendants, Southern Pacific Railroad Company and The Kern Trading and Oil Company, to said cross-complaint filed on the 10th day of January, 1911.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: #192. In the Circuit Court of the United States for the Southern District of Califor-

nia, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific Railroad Company et al., Defendants, and J. I. Lamprecht et al., Cross-complainants, vs. Southern Pacific R. R. Co. et al., Cross-defendants. Order Amending the Record. Filed Apr. 6, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [148]

[Petition for Appeal.]

*In the Circuit Court of the United States for the
Southern District of California, Northern Di-
vision.*

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC R. R. CO. et al.,

Defendants,

and

J. I. LAMPRECHT and F. M. AIKEN, Trustees,

Cross-Complainants,

vs.

SOUTHERN PACIFIC R. R. CO., THE KERN
TRADING & OIL CO. et al.,

Cross-Defendants.

The above-named cross-complainants conceiving themselves aggrieved by the decree made and entered on the twenty-first day of March, Nineteen Hundred and Eleven (March 21st, 1911), in the above-entitled case, do hereby appeal from said order and decree to

174 *J. I. Lamprecht and F. M. Aiken, Trustees,*

the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith, and they pray that this Appeal may be allowed and that a transcript of the record, proceeding and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

E. J. BLANDIN and

D. J. HINKLEY,

Solicitors for Cross-Complainants.

Dated: June 20th, 1911. [149]

[Endorsed]: No. 192. In the Circuit Court of the United States for the Southern District of California, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific R. R. Co. et al., Defendants, and J. I. Lamprecht and F. M. Aiken, Trustees, Cross-complainants, vs. Southern Pacific R. R. Co., The Kern Trading & Oil Co. et al., Cross-defendants. Petition for Appeal. Filed Jun. 21, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Blandin, Rice & Ginn, and D. J. Hinkley, #1008 Wright & Callender Building, Los Angeles, California, Solicitors for Cross-complainants. [150]

*In the Circuit Court of the United States for the
Southern District of California, Northern Di-
vision.*

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC R. R. CO. et al,

Defendants,

and

J. I. LAMPRECHT and F. M. AIKEN, Trustees,

Cross-Complainants,

vs.

SOUTHERN PACIFIC R. R. CO., THE KERN

TRADING & OIL CO., et al.,

Cross-Dedendants.

Assignment of Errors.

And now come the said cross-complainants and say that in the record and the proceedings of the said Court in the above-entitled cause and in the final decree made and entered therein on the twenty-first day of March, nineteen hundred and eleven, there is manifest error, and for errors the said cross-complainants assign the following:

FIRST: The Court erred in that it held, upon the admissions of the demurrer, that the lands described in the Cross-Complaint have been patented by the United States Government under a grant of lands made to the Southern Pacific Railroad Company of California by Act of Congress approved July 27,

176 *J. I. Lamprecht and F. M. Aiken, Trustees,*
1866 (14 Statutes 292) and Joint Resolution of Congress approved June 28, 1870 (16 Statutes 382).
[151]

SECOND: The Court erred in that it held, upon the admissions of the demurrer, that the clause:

“Yet excepting and excluding all mineral lands should any such be found in the tracts aforesaid; but this exclusion and exception according to the terms of the Statute shall not be construed to include ‘coal and iron lands,’ ”

in the patent, pleaded in the Cross-Complaint in this cause, is not effective to save and reserve the lands described in said Cross-Complaint from conveyance by said Acts of Congress and said patent.

THIRD: The Court erred in that it held, upon the admissions of the demurrer, that to hold that said excluding and excepting clause was and is effective to exclude and except the land described in the Cross-Complaint from the conveyance of said Acts of Congress and said patent, would render said patent a delusion and a snare instead of a muniment of title designed for the peace and security of those holding under it.

FOURTH: The Court erred in that it held, upon the admissions of the demurrer, that cross-complainants are not in privity with the Government title of the lands described in Cross-Complaint.

FIFTH: The Court erred in that it held that Congress has by law made a determination, by the officers of the Land Department, that all lands described in said patent are nonmineral in character, a necessary prerequisite to the issuance of said patent.

SIXTH: The Court erred in that it held, in effect, upon the admissions of the demurrer, that the patent pleaded in this case is conclusive evidence that the officers of the Interior Department decided before they issued the same, that the lands described in said Cross-Complaint were nonmineral.

SEVENTH: The Court erred in that it held that said Joint Resolution of Congress, did not authorize, or recognize [152] the authority of the Secretary of the Interior to cause said excluding and excepting clause to be inserted in said patent.

EIGHTH: The Court erred in that it held that the debates in the United States Senate on said Joint Resolution show that it was not the intention of Congress in passing said resolution to authorize, or to recognize the authority of, the Secretary of the Interior to save and reserve all mineral lands from conveyance by said Acts and said patents by inserting in said patent said saving and reserving clause.

NINTH: The Court erred in that it held that the Secretary of the Interior had not authority independent of said Joint Resolution, to insert said saving and reserving clause in said patent.

TENTH: The Court erred in that it held that, if said Joint Resolution be construed to *require* or *authorize* the said patent to contain said clause saving and reserving from the conveyance of said Acts and patent mineral lands, (which did not and could not appear of record as such), it must also be construed to *require* said patent to contain a clause saving and reserving from the conveyance of said Acts and patent, all lands within the limits of the

178 *J. I. Lamprecht and F. M. Aiken, Trustees,*
grant to which the United States had not full title and also those which were reserved, sold, granted or otherwise appropriated or were not free from pre-emption or other claim or rights at the time the line of said Road was designated by a plat thereof filed in the Office of the Commissioner of the General Land Office (which facts would necessarily appear of record).

ELEVENTH: The Court erred in that it did not hold that said Acts of Congress are laws as well as grants and are not subject to the rule of construction of private conveyances that an exception in terms as broad as the grant is void.

TWELFTH: The Court erred in that it did not hold that both known and unknown mineral lands are by law excluded [153] from the conveyance of said Acts and said patent.

THIRTEENTH: The Court erred in that it did not hold that the said Acts passed a present title to the grantees therein named of all lands thereby granted and that the officers of the Government could neither increase nor diminish such grant.

FOURTEENTH: The Court erred in that it did not hold, upon the admissions of the demurrer, that it appeared affirmatively upon the face of said patent and also upon the face of the record of the proceedings wherein said patent was issued, that the officers of the Land Department have never determined that the lands described in the Cross-Complaint were not mineral, and that no presumption that such determination has been made does or could arise from or exist in the face of said patent or the findings of

the officers of the Land Department upon which the patent was issued.

FIFTEENTH: The Court erred in that it did not hold, upon the admissions of the demurrer, that the patent pleaded in the Cross-Complaint, is inoperative and of no effect to pass title to the lands described in the Cross-Complaint.

SIXTEENTH: The Court erred in that it did not hold, upon the admissions of the demurrer, that said patent is, in this suit, valid, effective and conclusive according to its terms, import and intent as expressed by the language of the patent itself.

SEVENTEENTH: The Court erred in that it did not hold, upon the admissions of the demurrer, that the grant of lands made by said Act and Joint Resolution was of ten alternate odd-numbered sections per mile of road constructed under said Act as stated in said Act, instead of twenty alternate odd-numbered sections per mile of road constructed under said Act as stated in the patent pleaded in said Cross-Bill.

EIGHTEENTH: The Court erred in that it did not hold, [154] upon the admissions of the demurrer, that the cross-defendant, Southern Pacific Railroad Company, released to the United States all its right, title, interest and claim in and to the land described in the Cross-Complaint upon acceptance by it of the patent pleaded in the Cross-Complaint.

NINETEENTH: The Court erred in that it did not hold that the Cross-Complaint states a good cause of suit to which the said cross-defendants, Southern Pacific Railroad Company, and The Kern Trading

180 *J. I. Lamprecht and F. M. Aiken, Trustees,*
& Oil Company, should be required to file their answer
or plea.

TWENTIETH: The Court erred in that it made and entered in said cause an order and a decree sustaining the joint and several demurrer of Southern Pacific Railroad Company and The Kern Trading & Oil Company to and dismissing the said Cross-Complaint.

TWENTY-FIRST: The Court erred in that it made and entered in said cause an order and a decree sustaining the demurrer of T. S. Minot to said Cross-Complaint, and dismissing said Cross-Complaint as against him.

Dated: June 20, 1911.

E. J. BLANDIN and
D. J. HINKLEY,

Solicitors for Cross-complainants, #1008 Wright &
Callender Building, Los Angeles, California.

[Endorsed]: No. 192. In the Circuit Court of the United States for the Southern District of California, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific R. R. Co. et al., Defendants, and J. I. Lamprecht and F. M. Aiken, Cross-complainants, vs. Southern Pacific R. R. Co., The Kern Trading & Oil Co. et al., Cross-defendants. Assignment of Errors. Filed Jun. 21, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Blandin, Rice & Ginn, and D. J. Hinkley, #1008 Wright & Callender Building, Los Angeles, California, Solicitors for Cross-complainants. [155]

[Order Allowing Appeal.]

*In the Circuit Court of the United States for the
Southern District of California, Northern Di-
vision.*

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC R. R. CO. et al.,

Defendants,

and

J. I. LAMPRECHT and F. M. AIKEN, Trustees,

Cross-Complainants,

vs.

SOUTHERN PACIFIC R. R. CO., THE KERN
TRADING & OIL CO. et al.,

Cross-Defendants.

On this 20th day of June, 1911, came the cross-complainants in the above-entitled cause, by their counsel, and presented their petition for an appeal and an Assignment of Errors accompanying the same, which petition upon consideration of the Court is hereby allowed and the Court allows the appeal of said cross-complainants from the order and decree entered in said cause to the United States Circuit Court of Appeals for the Ninth Circuit, upon the furnishing of a bond, as provided by law, in the sum of Five Hundred (\$500.00) Dollars.

WM. W. MORROW,

Judge of ———.

Dated: June 20th, 1911. [156]

182 *J. I. Lamprecht and F. M. Aiken, Trustees,*

[Endorsed]: No. 192. In the Circuit Court of the United States for the Southern District of California, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific R. R. Co. et al., Defendants, and J. I. Lamprecht and F. M. Aiken, Trustees, Cross-Complainants, vs. Southern Pacific R. R. Co., The Kern Trading & Oil Co. et al., Cross-defendants. Order Allowing Appeal. Filed Jun. 21, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Blandin, Rice & Ginn, and D. J. Hinkley, #1008 Wright & Callender Building, Los Angeles, California. Solicitors for Cross-complainants. [157]

AMERICAN SURETY COMPANY
OF NEW YORK.

CAPITAL AND SURPLUS, \$5,000,000.

(CUT)

COMPANY'S OFFICE BUILDING,
100 Broadway, New York.

*In the Circuit Court of the United States for the
Southern District of California, Northern Di-
vision.*

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC R. R. Co. et al.,

Defendants,

and

J. I. LAMPRECHT and F. M. AIKEN, Trustees,
Cross-Complainants,
vs.

SOUTHERN PACIFIC R. R. Co., THE KERN
TRADING & OIL CO. et al.,
Cross-Defendants.

Costs Bond on Appeal.

Whereas, J. I. Lamprecht and F. M. Aiken, Trustees, cross-complainants in the above-entitled action, have presented their petition for an Appeal from the order and decree heretofore entered in the above-entitled court, which petition prays that said appeal be allowed to be taken to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and

Whereas, the above-entitled court has granted said petition upon the furnishing of a bond by said cross-complainants in the sum of Five Hundred Dollars (\$500.00). [158]

NOW, THEREFORE, the undersigned, the AMERICAN SURETY COMPANY OF NEW YORK, a corporation organized and existing under and by virtue of the laws of the State of New York, and duly authorized to transact business in the State of California, are held and firmly bound unto Southern Pacific Railroad Co., The Kern Trading & Oil Co. and T. S. Minot in the sum of Five Hundred Dollars, lawful money of the United States, in consideration of the premises and of the taking of said Appeal to the effect that said cross-complainants will pay all costs charges which may be awarded against

184 *J. I. Lamprecht and F. M. Aiken, Trustees,*

them on said Appeal or on withdrawal or dismissal thereof not exceeding the said sum of Five Hundred Dollars.

IN WITNESS WHEREOF, The said American Surety Company of New York has hereunto caused its name and corporate seal to be affixed by its duly authorized officers, this 19th day of June, 1911.

AMERICAN SURETY COMPANY OF
NEW YORK,

By F. L. HEMMING,
Resident Vice-President.

[Seal]

Attest: W. M. WALKER,
Resident Assistant Sec.

State of California,
County of Los Angeles,—ss.

On this 19th day of June, 1911, before me, Grace E. Newcomb, a Notary Public in and for Los Angeles County, State of California, duly commissioned and sworn, personally appeared F. L. Hemming and W. M. Walker, personally known to me to be the Resident Vice-President and Resident Assistant Secretary, respectively, of the American Surety Company of New York, the corporation described in and which executed the foregoing instrument, and they acknowledged to me that they executed the foregoing instrument on behalf of the said American Surety Company of New York, as its officers thereunto duly authorized.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this

certificate first above written.

GRACE E. NEWCOMB, [Seal]

Notary Public in and for Los Angeles County, State
of California.

My commission expires September 16, 1914.

[159]

EXTRACT FROM THE RECORD BOOK OF
THE BOARD OF TRUSTEES OF THE
AMERICAN SURETY COMPANY
OF NEW YORK.

The first quarterly meeting of the Board of Trustees of the AMERICAN SURETY COMPANY OF NEW YORK, after the annual Stockholders' meeting, was held at the office of the Company, No. 100 Broadway, New York City, on Wednesday, January 18, 1911, at 12 o'clock noon.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the

AMERICAN SURETY COMPANY OF NEW
YORK:

"Gentlemen:

"The Committee appointed by the Executive Committee of this Company at their meeting held Tuesday, December 13, 1910, for the purpose of nominating officers of the Company, * * * for the ensuing year, beg leave to report as follows:

“We nominate for * * *

Place.	Resident Vice-Presidents.	Resident Assistant Secretaries.
Los Angeles, Cal.	Wm. J. Washburn	Wm. J. Williams
	R. G. Lunt	Norman Williams
	<i>F. L. Hemming</i>	Chas. L. Chandler
	R. D. Weldon	<i>W. M. Walker</i>
	S. F. Zombro	F. L. Hemming
	W. W. Woods	R. D. Weldon.
* * *	* * *	* * *

“WHEREUPON, it was

“RESOLVED, that the Secretary be authorized to cast one [160] ballot on behalf of the Trustees present for the officers, members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, and Counsel, as recommended by the Nominating Committee for the ensuring year; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuring year.

* * * * *

“The following resolution was adopted:

“RESOLVED, that the Resident Vice-Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary.”

* * * * *

State of New York,
County of New York,—ss.

I, F. J. Parry, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; [161] and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 19th day of January, 1911.

F. J. PARRY,
Assistant Secretary. [162]

AMERICAN SURETY COMPANY
OF NEW YORK.

CAPITAL AND SURPLUS, \$6,000,000.
(CUT)

COMPANY'S OFFICE BUILDING,
100 Broadway, New York.

GENERAL CERTIFICATE.

The AMERICAN SURETY COMPANY OF NEW YORK, surety on the foregoing bond, hereby certifies that it has heretofore filed in the proper office of the Department of Justice at Washington,
(Insert correct name of Department)
D. C., the following papers:

1. Evidence that it has obtained authority from the Treasury Department of the United States under the Act of Congress approved August 13, 1894, as amended by the Act of Congress approved March 23, 1910, to act as sole surety on bonds in matters affecting the United States.

2. Evidence of the election of general officers of the Company for the current year, with their names.

3. Evidence of the *appoint* of an agent for service of process in the ——— Judicial District of California, Ninth Judicial Circuit.

4. Evidence of the authority of the within-named
F. L. Hemming of Los Angeles, Cal., and
W. M. Walker of Los Angeles, Cal.,
to execute bonds of the character of that annexed hereto on behalf of the Company.

IN WITNESS WHEREOF, the said AMERICAN SURETY COMPANY OF NEW YORK has

caused its seal to be hereto affixed and these presents to be executed by its proper officers at Los Angeles, Cal., [163] this 19th day of June, 1911.

AMERICAN SURETY COMPANY OF
NEW YORK,

By F. L. HEMMING,
Resident Vice-President.

[Seal] Attest: W. M. WALKER,
Resident Assistant Secretary.

The below-mentioned Executive Departments of the United States Government have authorized the filing with bonds executed by Surety Companies of a general certificate on the within form, in lieu of the various papers described therein, viz.:

WAR DEPARTMENT: By letter of the Judge Advocate-General, dated December 27, 1905.

DEPARTMENT OF JUSTICE: By letter of Attorney-General (S. B. S.), dated December 23, 1905.

POSTOFFICE DEPARTMENT: By letter of the Postmaster-General, dated January 16, 1906. (Not necessary to attach any certificate to Letter Carriers' Bonds.)

NAVY DEPARTMENT: By letter of Judge Advocate-General, dated October 19, 1905, transmitting memorandum of the Acting Secretary of the Navy, dated October 18, 1905. (2300-I.)

INTERIOR DEPARTMENT: By letter of the Secretary of the Interior, dated April 26, 1905. (P. M. Div. 1189-05-1988.)

DEPARTMENT OF AGRICULTURE: By letter

190 *J. I. Lamprecht and F. M. Aiken, Trustees,*
of the Secretary of Agriculture, dated December
26, 1905.

DEPARTMENT OF COMMERCE AND LABOR:

By letter of the Secretary of Commerce and
Labor, dated December 6, 1905.

DEPARTMENT OF STATE: Under rulings con-
tained in two letters, dated February 28, 1906,
from the Assistant Secretary of State, it is not
necessary to attach to bonds to be filed in that
Department either a general certificate on this
form or the other papers referred to therein.

TREASURY DEPARTMENT: Under Department
Circular No. 69, Division of Appointments, of
November 21, 1907, and subsequent rulings,
there SHOULD NOT be attached to bonds, to
be approved or filed in that Department, any
of the below-described papers: [164]

General Certificate.

Affidavit of Justification, executed by Officers or
Agents of Surety Companies.

Certificate of Authority from Attorney General
or Secretary of the Treasury to do business
in the United States, under the Act of Con-
gress of August 13, 1894, as amended March 23,
1910.

Certificate of the election of the General Officers
of the Company.

Power of Attorney of Officer or Agent author-
ized to execute the bond. (This includes cer-
tificates of the election of resident officers by
this Company.)

Quarterly Financial Statements.

The Home Office may be relied upon to file such of these papers as may be required by the Department.

ISTHMIAN CANAL COMMISSION: Do not attach a General Certificate, or any papers referred to therein, to bonds to be filed with this Commission.

In preparing a general certificate on the within form, be careful to insert the correct name of the proper Department in the blank that has been left for that purpose. Do not refer to Divisions, Bureaus, etc.

[Endorsed]: No. 192. U. S. Circuit Court, Ninth Circuit, Southern District of California, Northern Division. Edmund Burke vs. Southern Pacific Railroad Company et al. Bond on Appeal. Approved. Wm. W. Morrow, U. S. Circuit Judge. Filed Jun. 21, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [165]

[Order Allowing Appeal.]

In the Circuit Court of the United States for the Southern District of California, Northern Division.

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC R. R. Co. et al.,

Defendants,

and

192 *J. I. Lamprecht and F. M. Aiken, Trustees,*
J. I. LAMPRECHT and F. M. AIKEN, Trustees,
Cross-Complainants,
vs.

SOUTHERN PACIFIC R. R. Co., THE KERN
TRADING & OIL CO. et al.,
Cross-Defendants.

On this 30 day of June, 1911, came the cross-complainants in the above-entitled cause, by their counsel, and presented their petition for an appeal and an Assignment of Errors accompanying the same, which petition upon consideration of the Court is hereby allowed and the Court allows the appeal of said cross-complainants from the order and decree entered in said cause to the United States Circuit Court of Appeals for the Ninth Circuit upon the furnishing of a bond, as provided by law, in the sum of Five Hundred (\$500.00) Dollars.

WM. W. MORROW,
Judge of ———.

Dated: June 30, 1911. [166]

[Endorsed]: No. 192. In the Circuit Court of the United States for the Southern District of California, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific R. R. Co. et al., Defendants, and J. I. Lamprecht and F. M. Aiken, Trustees, Cross-complainants, vs. Southern Pacific R. R. Co., The Kern Trading & Oil Co. et al., Cross-defendants. Order Allowing Appeal. Filed Jul. 5, 1911. Wm. Van Dyke, Clerk. By Harry H. Jones, Deputy Clerk. Blandin, Rice & Ginn, and D. J. Hinkley, #1008 Wright & Callender Building,

Los Angeles, California, Solicitors for Cross-complainants. [167]

[Praeceptum for Transcript.]

*In the Circuit Court of the United States for the
Southern District of California, Northern Division.*

IN EQUITY—No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC R. R. CO. et al.,

Defendants.

and

J. I. LAMPRECHT and F. M. AIKEN, Trustees,

Cross-Complainants,

vs.

SOUTHERN PACIFIC R. R. CO., THE KERN

TRADING & OIL CO. et al.,

Cross-Defendants.

To the clerk of said court:

Please prepare the transcripts on Appeal by said cross-complainants, consisting of the following papers and pleadings:

1. Stipulation as to filing amended bill of complaint, filed October 27, 1910.
2. Amended Bill of Complaint, filed October 31, 1910.
3. (Amended) Cross-bill of Complaint of J. I. Lamprecht et al., filed October 31, 1910.

194 *J. I. Lamprecht and F. M. Aiken, Trustees,*

4. Answer of J. I. Lamprecht et al. to Amended Bill, filed November 1, 1910.
5. Stipulation for filing Amended Bill of Complaint and that Demurrer of defendants, Southern Pacific R. R. Co. et al., stand as Demurrer to Amended Bill, filed November 2, 1910.
6. Demurrer of T. S. Minot to Cross-bill of J. I. Lamprecht et al., filed November 10, 1910.

[168]

7. Joint and several Demurrer of Southern Pacific R. R. Co. and The Kern Trading & Oil Co. to Cross-bill of J. I. Lamprecht et al., filed November 11, 1910.
8. Appearance of J. I. Lamprecht and F. M. Aiken, Trustees, by D. J. Hinkley, filed December 27, 1910.
9. Stipulation granting leave to Lamprecht et al. to file an Amended Cross-bill, and that Demurrer to original Cross-bill may stand as Demurrer to Amended Cross-bill, filed January 9, 1911.
10. Cross-bill of J. I. Lamprecht and F. M. Aiken, Trustees, filed January 10, 1911.
11. Stipulation for Amendment of the record filed April ———, 1911.
12. Order amending the record filed April ———, 1911.
13. Cross-complainants' Petition for Appeal, filed ———, 1911.
14. Cross-complainants' Assignment of Errors, filed ———, 1911.

15. Order Allowing Cross-complainants' Appeal, filed ———, 1911.
16. Cross-complainants' Bond, filed ———, 1911.
17. Citation on Appeal, filed ———, 1911.
18. Opinion of Court in *Geo. D. Roberts et al. vs. Southern Pacific Railroad Co. et al.*
19. Opinion of Court in this case.
20. Final decree in this case.

Please advise me of the amount of money necessary to be deposited for the preparation of this transcript.

D. J. HINKLEY,

Solicitor for Cross-complainants, #1008 Wright & Callender Building, Los Angeles, California.

Dated: June 24, 1911. [169]

[Endorsed]: No. 192. In the Circuit Court of the United States for the Southern District of California, Northern Division. In Equity. Edmund Burke, Complainant, vs. Southern Pacific R. R. Co. et al., Defendants, and J. I. Lamprecht and F. M. Aiken, Trustees, Cross-complainants, vs. Southern Pacific R. R. Co., The Kern Trading & Oil Co. et al., Cross-defendants, *Precipe* for Transcript. Filed Jun. 24, 1911. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Blandin, Rice & Ginn, and D. J. Hinkley, #1008 Wright & Callender Building, Los Angeles, California, Solicitors for Cross-complainants. [170]

[**Certificate of Clerk to Transcript of Record.**]

*In the Circuit Court of the United States of America,
of the Ninth Judicial Circuit, in and for the
Southern District of California, Northern
Division.*

No. 192.

EDMUND BURKE,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY
et al.,

Defendants,

and

JOHN I. LAMPRECHT and F. M. AIKEN,
Trustees,

Cross-Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
a Corporation, THE KERN TRADING &
OIL COMPANY (a Corporation), and T. S.
MINOT et al.,

Cross-Defendants.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing one hundred and seventy (170) typewritten pages, numbered from 1 to 170 inclusive, and comprised in one volume, to be a full, true and correct copy of the pleadings,

and of all papers and proceedings upon which the final decree was made and entered in said cause, and also of the opinion of the Court, the petition for appeal, assignment of errors, order allowing appeal and bond on appeal in the above and therein entitled cause, and that the same together constitute the transcript of the record on appeal to be United States Circuit Court of Appeals for the Ninth Circuit in said cause.

I do further certify that the cost of the foregoing record [171] \$148.15, the amount whereof has been paid me by John I. Lamprecht and F. M. Aiken, Trustees, the appellants in said cause.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Northern Division, this 24th day of August, in the year of our Lord one thousand nine hundred and eleven, and of our Independence, the one hundred and thirty-sixth.

[Seal]

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California. [172]

198 *J. I. Lamprecht and F. M. Aiken, Trustees,*

[Endorsed]: No. 2028. United States Circuit Court of Appeals for the Ninth Circuit. J. I. Lamprecht and F. M. Aiken, Trustees, Appellants, vs. The Southern Pacific Railroad Company (a Corporation), The Kern Trading & Oil Company (a Corporation), and T. S. Minot, Appellees. Transcript of Record. Upon Appeal from the United States Circuit Court for the Southern District of California, Northern Division.

Filed August 28, 1911.

FRANK D. MONCKTON,

Clerk.

By Meredith Sawyer,

Deputy Clerk.

[Order Extending Time to August 30, 1911, to
Docket Cause and File Record.]

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

J. I. LAMPRECHT and F. M. AIKEN, Trustees,
Appellants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,
THE KERN TRADING & OIL COMPANY
et al.,

Appellees.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said appellants to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of

vs. The Southern Pacific Railroad Co. et al. 199

Appeals for the Ninth Circuit, at San Francisco, California, be, and the same hereby is, enlarged and extended to and including the 30 day of August, 1911.

Los Angeles, California, July 24, 1911.

WM. W. MORROW,

Judge.

[Endorsed]: No. 2028. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 29, 1911. F. D. Monckton, Clerk. Refiled Aug. 28, 1911. F. D. Monckton, Clerk.

